
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a
Corporation, Owner and Claimant of Steamship "Vir-
ginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Cor-
poration,

Appellee.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a
Corporation, Owner and Claimant of Steamship "Vir-
ginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Cor-
poration, as bailee of a cargo of lumber consisting of
3,563,011 feet, and for the use and benefit of the owners
and insurers of said cargo,

Appellee.

APOSTLES ON APPEAL

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From the United States District Court for the Western Dis-
trict of Washington, Southern Division.

Filed

JAN 5 1916

F. D. Monckton,

Clerk.

Testimony of FRED A. GARDNER:

N. C. Erismann, and ask you if that accurately shows the nature of the damage to the steamer "Strathalbyn"?

A. It shows accurately that portion apparent at the time I examined her, with the exception that considerable of the damages under water in this photograph was later seen when the vessel was discharged and in drydock.

Q. What was the nature of the damage below the water-mark? A. The plating was buckled, bent and in some cases fractured below the point shown in this photograph.

Q. Mr. Gardner, I call your attention to the letter "E" on "Claimant's Exhibit 5-6" and ask you what that is? A. The line appears to be pointing to the 27-foot draught mark at the stem.

Q. To the stem of the "Strathalbyn"? A. Yes.

Q. What point does that photograph show of the stem broke? A. At about the 28-foot 6 mark, I should judge.

Q. And that portion of the stem above the 28 foot 6 mark, was carried in which direction, Mr. Gardner? A. Carried to starboard with the shellplating.

Q. And that portion of the stem below the 28-6 mark, what happened to that? A. It was bent slightly aft and to port.

Q. Can you identify that portion of the stem above the 28 foot mark on this exhibit? A. I don't know that I can see the stem itself, but I can see the plating that was originally attached to the stem, and I think the stem was still connected to this plating, as I recall it.

Q. Just mark that; draw a line off to the side and mark that "F. A. G. 1"? A. Yes.

Q. What was the condition of the plating which appears there on the starboard side of the "Strathalbyn"? A. It was very badly crumpled up and fractured.

Q. What was the condition of the plating on the starboard sde of the "Strathalbyn"; was that bent or crumpled? A. Above the break of the stem it was bent over to starboard and fractured as well.

Q. What was the nature of the damage to the steamer "Virginian" caused by this collision? A. The

plating on the starboard bow for about 9 strakes down, as I remember, and extending back in some cases on to the second plate; the damage extended to the second plate and included the second plate.

Q. What was the nature of the damage to those plates? A. Some of them were fractured, others buckled and bent. The framing in the way of plating was more or less damaged; some of the frames were broken; others bent and buckled. There was a similar damage on the port bow, but not as extended as on the starboard side, and in that case did not extend, as I recall at the present time any further than the first plate on each strake.

Q. Was there damage to the "Virginian's" stem?

A. The stem was bent and on removing it it was found to be fractured; bent aft.

Q. Returning to the "Strathalbyn" what happened to that portion of her stem above the point where it broke? A. A portion of the stem was still attached to the side-plating, shell-plating, was hanging on this plating back 25 or 30 feet from its original position.

Q. On which side? A. On the starboard side.

Q. What is the comparative strength of the upper and lower plating on the steamer "Strathalbyn"? A. The upper plating was lighter than that below; it usually is.

Q. Is the same true of the "Virginian"? A. Yes, I think it is.

Q. Mr. Gardner, did you make recommendations as to repairs necessary to be made to the steamer "Strathalbyn"? A. I did.

Q. Also a survey of the extent of the damage? A. I did.

Q. Did you do the same with respect to the steamer "Virginian"? A. I did.

Q. Mr. Gardner, it appears from the testimony already taken in this case, that the steamer "Strathalbyn" at the time she left the Port of Tacoma prior to this collision had a 6-degree list to starboard and that she had this same list of 6 degrees to starboard immediately prior to the collision; with that fact in your

knowledge can you tell from the nature of the damage to the two vessels the angle of contact of the two vessels at the point of collision; with the further fact in your knowledge that just at the time of the collision neither vessel was making very much headway in the water and that the "Strathalbyn" was so trimmed that her stem was practically vertical on lines from the bow to the keel, and that the "Virginian" was light and much higher out of the water and her bow was much higher out of the water than the bow of the steamer "Strathalbyn"?

MR. HAYDEN: I wish to object to that hypothetical question upon the ground that it does not fairly state the evidence in this case and does not include all facts and conditions which would be essential as shown by the evidence in the case upon which to base a conclusion of this witness.

A. I do not quite understand the portion of the question referring to standing vertical with a line of the keel. That is not quite clear to me, just exactly what you mean.

MR. BOGLE—Q. What I mean is that there was no overhang, practically no overhang to her bow in the way she was trimmed on this night? A. That the stem stood in a vertical position due to the trim of the vessel?

Q. Yes, that was my idea? A. If she ordinarily had no verhang.

Q. The "Virginian" at the time was on an even keel? A. Taking into consideration the vessel having a list and that a portion of her stem was forced to starboard, the upper portion of it, and the lower portion forced to port, I would conclude that the vessels must have been practically head on to each other.

Q. That at the time of the collision? A. At the time of the collision.

Q. Mr. Gardner, could the damage which you found on the "Strathalbyn" have been occasioned in any other way than by a blow from a vessel hitting her almost directly head on?

MR. HAYDEN: The same objection,—the question not stating the facts fully and fairly, or furnishing sufficient information for the opinion of this witness

from the testimony already produced in the case.

A. I suppose the damage might have been occasioned in some other way, but I was of the opinion that it was occasioned due to her being struck by the "Virginian", or striking the "Virginian" while the keels of both vessels were practically parallel, one vessel ahead of the other.

MR. BOGLE—Q. On what do you base that opinion? A. Upon the nature of the damage and the statement to the effect that the vessel was listed at the time of the collision.

Q. From your examination could you tell or did you determine where the bow of the two vessels first came in contact? A. I probably did at the time but I don't recall positively just at the present time.

Q. Can you explain, Mr. Gardner, how the stem of the "Strathalbyn" was carried to starboard, the upper portion of it, and the lower portion of the stem was bent to port by this collision? A. My opinion is that as the metal yielded after the vessels collided, owing to the greater strength of the lower portion of the "Strathalbyn" as compared with the upper portion, that the "Virginian" was fended off to the port; in other words, that the course of the vessels after the collision must have changed somewhat, due to the glancing effect on account of the "Virginian" coming into contact with the underwater portion of the "Strathalbyn".

MR. BOGLE: That is all.

CROSS EXAMINATION.

MR. HAYDEN—Q. Have you any photographs of the "Virginian"? A. I think I have.

Q. Would you mind letting me see them, please? A. I may have some negatives; I don't know whether I have some photographs. There are a lot of them of the "Strathalbyn".

Q. Do you remember of taking any more photographs than these? A. I took a lot, but they did not come out at all; in fact, some of the films have absolutely nothing. I had some others blacker than that, just showing simply an outline.

(Witness produces all the plates and photographs which he has of the "Virginian".)

Q. Are you sure now that is all you have, Mr. Gardner? A. To the best of my knowledge and belief it is. They are all that seems to appear in the folder where these things are kept.

Q. Now, referring to "Libelant's Exhibit F. A. G. 1 for identification", will you please state what that photograph is of? A. To the best of my knowledge and belief that is a photograph of the port bow of the "Virginian".

Q. Taken by yourself or under your direction? A. Yes.

MR. BOGLE—Q. Which? A. Taken by myself, I think. In fact, I am pretty sure of it.

MR. HAYDEN—Q. Where was it taken? A. Taken in Seattle.

Q. At what dock? Was it taken at a dock? A. If I remember correctly that vessel was hauled alongside of Heffnan's dry-dock, and later taken away from there and I think that was where that picture was taken; I would not be positive of it, no.

Q. What does the photograph show? A. Unfortunately it does not show a great deal; it does show the damage to some of the plating, however.

Q. Was there any more damage to the plating on the port side of the "Virginian" than is shown in that photograph? A. There may have been some in this shadow that does not show here.

Q. Was there any damage back of the right hand side of the photograph? A. The damage, as I recall it, extended along no further than the first plate on each strake. Of course the length of these plates vary.

Q. The perpendicular line against which the ladder is resting is what? A. The stem of the vessel.

Q. Will you please take a pen and commencing at the top of the picture put an arrow at all the places on the picture that show damage and extend a line out from those arrows to the white portion of the picture, leaving room for some identification figure? A. I can't say whether that is damage or just scratched paintwork.

The picture is not very clear. These are undoubtedly dents.

Q. Please do not cover up the indication of damage by your arrow? A. That is all I am positive about. I am inclined to think that these are dents here (pointing), but they may be only paintwork scratches.

Q. Just mark the dents you have last referred to with an X. Now commencing at the top of the line of arrows mark down numerically with consecutive numbers the points that indicate damage and explain them as you proceed; state particularly whether they are dents or holes through the plating. A. No. 1, indentation, No. 2, apparently indentation; No. 3, indentation; No. 4, sharp indentation; No. 5, indentation; No. 6, indentation; No. 7, fracture; No. 8, apparently sharp indentation, possibly a fracture; same remarks apply to No. 9. No. 10, indentation, possibly fracture; No. 11, indentation.

Q. Now, Mr. Gardner, if I understood your testimony correctly, you said there were some fractures to the plating on the port side; what is your recollection about that,—which one of these marks that you referred to are the fractures? A. I think the record shows that.

Q. No. 10, No. 9, No. 7 are unquestionably fractures, aren't they?

MR. BOGLE: I object to that. Let the witness testify. He has shown which were fractures and which were indentations in his opinion.

THE WITNESS: I wish to say that I consider the photograph a very poor one, and possibly misleading. I have not offered this voluntarily as substantiating any statements that I have made.

MR. HAYDEN—Q. Have you a copy of your report of survey of the "Virginian"? A. I think I have.

Q. Will that report of survey show the indentations and fractures of the plates on the port side of the "Virginian"? A. I think only in a general way.

Q. While we are at this identification would you make getting your report of survey and see if after examining it it refreshes your recollection in any particu-

lar in regard to that situation? A. Yes. (Witness produces report of survey.)

Q. Now, referring to your report of survey, dated January 29, 1912, on the "Virginian",—I would like to ask you before going into that if you made any drawings to indicate the work that had to be done for the men to proceed by? A. No.

Q. Have you in your possession any drawings that were made by anybody else for the repairs to the "Virginian"? A. I have no drawings made for repairs to the "Virginian".

Q. Did you ever see any such drawings made? A. No.

Q. Now, can you by referring to this report of survey last mentioned by me indicate on the photograph "Libelant's Exhibit F. A. G. 1 for identification" any plate that was fractured? A. It is impossible to make a comparison between the report and the photograph from the fact that the photograph is incomplete and only shows a portion of the bow, and what the numbers of these plates were I don't recall at the present time by referring to the photograph.

Q. Would it assist you any to arrive at the number of the plates by referring to "Libelant's Exhibit F. A. G. 2 for identification" and "Libelant's Exhibit 3 for identification"? A. No, because it is impossible to decipher the line of strakes, although there are numbers placed on these plates by someone, I don't know who. Certainly not by myself.

Q. I see in here in your report of survey of shell plating on the port side that H strake No. 1 plate fractured, to be cut out and renewed? A. Which side?

Q. On the port side, H strake No. 1? A. You can't tell from the photograph which is the H-strake on the port side; and even were those numbers shown on the starboard side and the port side as well, I would not be able to identify them because they are not numbers that I put on the plates. I simply took my numbers from the bottom up, neglecting the stealers as stated in the report.

Q. What do you mean by neglecting the stealers?

A. Well, there is a triangular shaped plate, as the form of the vessel changes, inserted to make up for the difference in the number of strakes; there would be more strakes in the amidships than there are at the stem or stern, you see, as the vessel broadens out, it makes more surface to cover, and therefore there are a greater number of strakes of plating amidships than would be shown at the stem or at the stern; there is a plate inserted to make up for that difference, which is termed a stealer or thief.

Q. Is that plate inserted on the stem or the bow of the ship or is it inserted amidships? A. Where the difference in the area changes in the ship as she fines forward or fines aft.

Q. None of these stealers are shown in this photograph? A. None of them shown in this photograph.

Q. Your report refers only to the strakes as are shown in this photograph, does it not? A. No, my report is not made from the photograph; my report is made from the ship.

Q. Where your report refers to strake H, for instance that is the strake— A. (intg.) Counting from the bottom up.

Q. Counting from the bottom up at the bow? A. Yes.

Q. Practically at the stem? A. At the stem, yes.

Q. If your report shows that Strake H, plate 1, was fractured on the port side, what would you say as to whether or not the report was correct? A. To the best of my knowledge and belief the report is correct.

Q. And your report does show that strake H, plate 1, fractured, to be cut out and removed, does it not? A. Yes. I may state, however, that in preparing reports typographical errors sometimes occur.

Q. Why do you say that? A. Simply in explanation of a condition that is known to exist at times; from your dwelling on this particular plate, possibly there has been some error, or you think there has been some error made.

Q. You are mistaken there, Mr. Gardner, because I don't know anything about it. This is the first time

I have seen the report. A. That is my reason for saying that.

Q. I simply want to know as to whether or not the report is accurate? A. As I say, to the best of my knowledge and belief the report is correct.

Q. You do not want the Court to assume by reason of the statement that you made, that there may be a typographical error in it, that the reference to the Plate No. 1 H strake, is wrong, do you?

MR. BOGLE: I object to that. The witness has stated just exactly what the conditions were and has explained his testimony.

MR. HAYDEN—Q. I am not trying to catch you at all, Mr. Gardner. I may say I think you are too big a man to try to catch you. I simply want an explanation here. A. As I stated in answer to your question, I was under the impression that possibly an error had been discovered as you were dwelling on the particular plates.

Q. My purpose in asking it is simply for the information of the Court or anybody else who may be interested in trying to solve this case. I only want a full disclosure, if we can get it, of the facts in this case. A. Yes.

Q. That is my only purpose in asking this question. I will repeat the question now and ask you if you want the Court to assume that the facts are different with regard to Strake H being fractured as shown by the report?

MR. BOGLE: The same objection.

A. I will repeat my statement, that to the best of my knowledge and belief the report is correct.

MR. HAYDEN—Q. Now, still referring to the port side, were there any frames bent, broken or fractured? A. If I discovered any, it would be found in that report.

Q. Will you please look at the report and refresh your recollection about that and state whether or not there were any? A. Frames, port side, frame No. 1, slightly bent above forepeak tanktop, to be faired in

place; frame No. 2, slightly bent out below forepeak tanktop, to be faired in place.

Q. Is that all the references that there are to frames in the report, on the port side?

MR. BOGLE: I object to that. We have agreed that all survey reports will be introduced in evidence, and it will be apparent to the Court what the reports show.

MR. HAYDEN: I would like to have an explanation of the report from the man who made it. That was the purpose of asking the question.

MR. BOGLE: I have no particular objection to the question except we have agreed and intend to put in the survey report. A. I have no recollection at the present time of any further damage to the frames on the port side, and I see no further reference in the report of any additional damage to the frames on the port side.

Q. What part of the vessel is the forepeak tank situated in? A. It is situated immediately on the forward end of the ship.

Q. With respect to the depth of the hold, where is it situated; is in the bottom of the ship— A. (intg.) It extends from the bottom of the ship up to a certain height, and there flat or the deck is built over, forming the upper portion of the tank.

Q. About how high does it extend up above the bottom of the ship? A. It varies in different ships.

Q. Well, of course I am referring to the "Virginian"? A. In this particular case I don't recall exactly how far up, but I should say approximately 15 feet. I would not be positive about that, however.

Q. What in your opinion was the denting and fracturing of the plates on the port side of the "Virginian" caused by? A. I think it was caused by coming in contact with the structure of the "Strathalbyn", that portion of it that was forced over to starboard on the "Strathalbyn".

Q. What was the size of the frames that was bent on the port side of the "Virginian"? A. The size of the frames?

Q. Yes. A. I don't remember just now, but I think they were probably about 7 inches.

Q. What do you mean by 7 inches? A. 7 inches deep. There is an angle, if I recall it correctly, by possibly 5 inches—5 by 7, I think.

Q. The frames would be 7 inches deep and 5 inches wide? A. I think that is about the size of them.

Q. Is there an angle on the outboard side of the frames to which the plating is fixed? A. The plating is attached to the frames.

Q. Can you make a sketch of the appearance of the frames looking right down on the end of them? Put it on this "Libelant's Exhibit F. A. G. 1 for identification"? A. Look directly on the end of it?

Q. Looking directly down on the end of it, yes? A. This would be the end of the frame, and this the plate to which it would be attached.

Q. You have marked the line out from that "frame" and the other "plating"? A. Yes.

Q. What part of the frame is 5 inches? A. The fore and aft portion of it.

Q. That is, the part that is adjacent to and touching your picture of the plating is 5 inches, and the part that is at right angles to the plating— A. (Intg.) I am simply assuming the size of it, because I did not measure it. If I did, I don't recall it; I don't remember the exact measurements.

Q. But, with a ship of that character from your experience and from your recollection of the frames you think that is about right? A. I think that would be about the size of them.

Q. And the 7 inches is the distance from the plating? A. Inboard.

Q. Inboard or the line that is drawn at right angles to the plating? A. Yes.

Q. Would you mind putting on this little diagram the 7 inches, to indicate more clearly what we have been referring to? A. Yes.

Q. Do you recollect whether on the frames referred to as having been bent on the starboard side there were

any reverse frames there? A. I think there were none; I am not positive of that however.

Q. How far from the stem aft is the frame No. 1? A. I don't recall that positively, but I think about 2 feet abaft the stem.

Q. And how far aft of frame No. 1 is frame 2? A. I think the frames are spaced 2 feet; I am not positive of that though.

Q. Can you state now, referring to "Libelant's Exhibit F. A. G. 1 for identification", whether the indication of dents is forward or aft of frame No. 1? A. Some of them are aft and one of them I think is forward; No. 7, I should say, was forward of frame No. 1; No. 10 is forward of frame No. 1, and No. 11 is also forward of frame No. 1, in my opinion.

Q. Referring to your numbers, are they forward or aft of frame No. 2? A. I think it is impossible to state from the photograph; that would be determined from an interior examination in making the survey.

Q. Do you recollect now what your examination showed with respect to that? A. I do not. It is my opinion, however, that No. 1 might possibly be slightly aft of frame No. 2; No. 2 also; possibly No. 3. The rest of them in my opinion are forward of frame No. 2. The ones I have referred to as being possibly abaft frame No. 2, are certainly only very slightly abaft of that frame, as indicated by the photograph, which is, as I have said before, a very poor one.

Q. Will you indicate on that photograph about where the top of the forepeak tank would be? A. I think that is more clearly shown on one of the other photographs.

Q. Well, if you prefer, refer to one of the other photographs. A. To the best of my recollection this fracture was just at the top of the forepeak tank.

Q. You are referring now to photograph "Libelant's Exhibit F. A. G. 2 for identification"; mark on that "F. A. G. 12"? A. Yes.

Q. That is at about the 23 foot mark as I make it out on the photograph? A. Approximately 23, yes.

Q. What was the thickness of the plating at No.

11 on "Libelant's Exhibit F. A. G. 1 for identification"? A. I did not measure it; I could not say. If I measured it I made no record of it. Possibly I might have measured it to see that the same size plating was returned to the vessel, but I have no record of the exact measurements taken.

Q. What is your best recollection now of the thickness of that plating? A. It is a long time ago. As I say, I have no records of what the measurements were, if they were taken. They may not have been taken by me personally.

Q. Then, haven't you any recollection of what they were? A. As I say, I have not, no, in this length of time. Probably they would be in the neighborhood of 3-4 of an inch, something of that kind.

Q. Now, did you make any measurements of the thickness of the plating above No. 11?

MR. BOGLE: I object to this line of cross-examination upon the ground it is immaterial; on the further ground it is not proper cross-examination, these matters not having been gone into on the direct.

A. If I made any measurements I have no records of them at the present time.

MR. HAYDEN—Q. Have you any recollection independently of measurements of the thickness of the plating at say No. 1?

MR. BOGLE: Let my objection run to all of this.

MR. HAYDEN: Yes. A. No more than any of the rest of it.

Q. Do you remember whether the plating was the same thickness on the port side as on the starboard side on the same strake? A. I think it would be rather unusual to find any difference in thickness.

Q. Now referring to "Libelant's Exhibit F. A. G. 2 for identification", will you please state what that photograph represents? A. It represents the starboard bow of the "Virginian".

Q. Do you know who took it? A. I think I took it myself.

Q. Where was it taken? A. That particular picture was taken at a wharf somewhere along the water

front of Seattle; just what wharf I don't know.

Q. This collision occurred Mr. Gardner, on the 12th of January, 1912, do you know how long after that date these photographs were taken? A. I have no record of the date.

Q. Have you a record of the date you were requested to leave San Francisco to make this examination? A. Doesn't this record refer to it, or does it—I don't know—"Proceeded to Seattle on January 15, 1912, and did not make survey on the SS. 'Virginian', 7914 tons gross, afloat alongside of wharf in Seattle on January 17 and subsequent dates. In dry dock at Bremerton Navy-yard on January 17, 1912. I can say that this photograph was taken sometime between the date of January 15th and January 27th.

Q. Were all of these photographs taken at the same time, that we have been referring to? A. No.

Q. "Libelant's exhibits from 1 to 4"? A. No. Those three were taken on the same date.

Q. Now, you say "those three"; you refer to Libelant's Exhibits for identification F. A. G. 2, 3 and 4"? A. Yes. And this one was taken within a few days of the others, but whether before or after I cannot state positively at the present time.

Q. When you say "this one" you refer to "Libelant's Exhibit for identification F. A. G. 1"? A. Yes.

Q. Will you now take your pen and make an arrow-head and extend a line from it where the damage is shown on the starboard bow of the "Virginian" on "Libelant's Exhibit for identification F. A. G. 2"? A. The same as on this one?

Q. The same as on "F. A. G. 1", yes. A. That is a very poor photograph and does not show only those that are very pronounced.

Q. Will you please number those down from the top? A. Yes.

Q. Now, explain please what the nature of the damage was at No. 1? A. Of course I wish to have it borne in mind that this is simply an opinion based upon a very poor photograph, and so far as I can see has no bearing on the damage that was actually found by in-

terior and exterior examination of this plating.

Q. In connection with that, Mr. Gardner, if necessary, please refer to your report of survey, and if your recollection is at all refreshed by your report of survey, tell us what it is. A. As stated before, the photograph is of such a nature that it is impossible to locate the exact points by either referring to the photograph or the report, as indicated on this photograph; but judging entirely from the photograph No. 1 appears to be a fracture; No. 2 appears to be indentations. No. 3—

Q. (Intg.) Just a moment. At No. 2 you have made five arrow-heads on the line; you mean there are five indentations?

A. Five scores or indentations possibly.

Q. Shown on No. 2? A. That is what it appears to be on this photograph. No. 3 appears to be a sharp indentation. No. 4 appears to be a sharp indentation and possibly a fracture; No. 5 appears to be a fracture.

Q. Now, commencing near the waterline as shown in this "Libellant's Exhibit for Identification F. A. G. 2," I see a mark "E-2"; what does that mean?

MR. BOGLE. I object to that. The witness has stated that these marks were not placed on the photograph by him.

A. It is impossible for me to identify these marks; I don't know what they are intended for. They were probably put there by the workmen as a guide for some purpose best known to them.

MR. HAYDEN—Q. Does your recollection lead you to believe that they indicate damage at those places?

MR. BOGLE: I object to the question.

A. It appears to be numbering of plates only, to be treated in some way determined upon by a perusal of a survey report. They may have possibly been placed there after the survey report; I am sure I don't know; I don't know at this time. I may possibly have been able to have told you while the job was going on, but I don't recall at the present time just what the significance of those marks is.

Q. When you refer in your report of survey to plate No. 1, what do you mean by that? A. I mean the

first plate counting from the stem on that particular strake.

Q. Towards aft? A. Towards aft, yes.

Q. I see by the report made by you, that you have stated that the shell plating on the port side was damaged on Strakes C, D, E, F, G, H, J and K, all on plate No. 1, and the shell-plating on the starboard side at strakes B, C, D, E, F, G, H, J, K and L, all in Plate No. 1, with the exception of F-strake, where it is stated that the damage is a fracture of Plates 1 and 2. That is correct, is it? A. That is correct.

Q. Have you any data by which it can be determined where these different strakes last referred to are located on the "Virginian"? A. No, I have not in my possession.

Q. Did you commence to letter the strakes for the purpose of your report from the upper strake downward or from some other strake? A. From the bottom plate upward.

Q. From the bottom plate upward? A. Yes.

Q. Then Strake No. G would be the seventh strake from the bottom of the ship? A. Yes.

Q. And by "strake" you mean line of plating, do you not? A. Yes.

Q. Referring now to F-strake on the starboard side, your report shows that Plates Nos. 1 and 2 were fractured, and referring to F-strake on "Libelant's Exhibit for identification F. A. G. 2," from which you have drawn a line and numbered it 5, I see that that strake is marked F-1. Is that the same strake that is referred to as "F" in your survey report?

MR. BOGLE: I object to that. The witness has stated that these figures were placed upon the photograph by someone else and that he has no knowledge as to what they refer to?

A. I don't know. I simply was going to say that these numbers that you see on these plates may be identical with my report, but I have no knowledge of their having been put there from the report or whether they are identical with the report, as I did not put them there myself.

MR. HAYDEN: Q. Judging from the nature of

the damage referred to in your report as having been inflicted at Strake F-1 on the starboard side, what is your best recollection as to whether that is the same damage as is shown at Strake F-1 in "Libelant's Exhibit for identification F. A. G. 2"?

A. I have no means of comparing the two at all. I have no record referring to the report and the photographs that would enable me to recall just what the damage was. The report was simply made with a view of restoring the vessel to the condition that she was in prior to sustaining damage and whether a plate might have been fractured at the forward end or after end was not at the time considered material.

Q. Please take the photograph F. A. G. 2 and indicate thereon, if it is shown, where Plates 1 and 2 were fractured?

A. 1 and 2 on what strake?

Q. There is only one strake referred to? A. "F"?

Q. Where the plates 1 and 2 were fractured. I want to find out by that photograph where plates 1 and 2 were fractured? A. I cannot tell you from the photograph where Strake F is.

Q. I am not asking you about the strake now, Mr. Gardner. I am asking you where plates 1 and 2 are fractured as shown by the photograph "Libelant's Exhibit for identification F. A. G. 2"? A. I cannot show it on the photograph, because that refers to strake F and the photograph does not show me where strake F is.

Q. I do not care anything about the strake at all. I only want to know where the fracture of plates 1 and 2 occurs on the starboard side of the "Virginian"? A. I again repeat that the fracture on plates 1 and 2 is stated in the report as being on strake F, and there is nothing in the photograph that will tell me where strake F is; therefore I cannot tell you where the fractures on plates 1 and 2, strake F, are. I do not want to appear obstinate in this at all, but to judge from that photograph as to the location of these strakes, the photograph would have to show the strakes and would have to show them from the bottom of the ship, and as the ship is in the water it certainly cannot show the strakes in such a way that I could determine F strake or any other

particular strake, any more than from these markings that appear on the photograph which I did not put there.

Q. I believe, Mr. Gardner, you stated a few minutes ago that figure No. 5 was in your opinion a fracture? A. Yes, it appears from the photograph to be a fracture, and I believe that fracture to be about at the tank top, the fore-peak tank top, but what strake it is on I don't know.

Q. Does that fracture appear to extend more than one plate back from the stem? A. No; it appears to be on No. 1 plate.

Q. Does it appear to be on No. 2 plate also? A. In this photograph it does not appear to be, unless that is a very short plate. I have no means of knowing the length of that plate from the photograph. If it is a short plate it might possibly extend on to the second plate. If it is a long plate it might all be on one plate. I can simply say that the photographs were very disappointing to me, as when I took them I expected to have something that I could refer to, to meet just such a case as this, so that I would be able to answer definitely where these damages were, in addition to what is set forth in the report.

Q. At the time you took these photographs did you understand that all of the damage that was visible on the starboard side was above the water as shown in these photographs?

MR. BOGLE: I object to that as immaterial, what his understanding was at the time he took the photographs.

A. No, I have no such understanding of it at all. I merely took the photographs to make a record of what damage was apparent above the water line. Even a good photograph would not show the damage below the water line or the interior damage, which is found by an interior examination.

MR. HAYDEN: Q. Did you make or have made letters on the bow of the "Virginian" to indicate the strakes that you have mentioned in your survey report? A. I did not make any letters, and to the best of my recollection at the present time I had no letters made. I might state that in examining the vessel afloat the

strakes were determined by an interior examination, to the best of my ability; I think they were then numbered from the forecastle deck downwards and then later verified in the dry dock and referred to in the manner in which plating is usually referred to in my report, as the report shows; that is my recollection of it at the present time.

Q. Was that lettering done at your request? A. No lettering necessary. This is simply notes taken.

Q. Do you remember whether the lettering referred to in your report corresponds with the lettering that had theretofore been placed on the "Virginian"? A. No, I don't remember whether it corresponded or not.

Q. Is it the usual custom with Surveyors to always count the strakes from the bottom up? A. I think it is generally recognized in ship construction that plating is lettered from the bottom up.

Q. So that if the general rule were followed and the plating were lettered from the bottom up, then the strake that you refer to as "F" will be the same as F-1 on this photograph? A. Not necessarily.

Q. I say if this custom were followed? A. Not necessarily, as in my report I have departed from the general custom to the extent of eliminating the effect of the stealers on the strakes of plating entirely to simplify that, so that in looking at it you could count from the bottom up and not refer to what effect the stealer might have on it; in other words, a stealer would cut out a plate on the bow.

Q. Looking at this "Libelant's Exhibit for identification F. A. G. 2," I notice that as far as is observed here the lettering indicates the strakes as consecutive, commencing with "D"? A. Yes.

Q. And it does not appear from this that the stealers were considered? A. The stealer may be below "D."

Q. The stealers were considered? A. It may be below "D."

Q. In what part of the ship are the stealers usually inserted? A. Depending on the width of the plates, varying with the plates. A stealer on that vessel would come about—I would expect it in the neighborhood of

"C" and "D"; I would not say positively; I could not say without seeing the shell-plating plan.

Q. Do you remember how far above the bottom strake "F" referred to in your report would be? A. I have no means of knowing at present; I made no record of it, for the reason that in the event of my having occasion to determine that I would probably go to the American-Hawaiian Steamship Company and ask them to show me their shell-plating plan. I had no reason for noting that.

Q. How would you determine from the shell-plating plan of the American-Hawaiian Steamship Company where strake F would be on the "Virginian"? A. By simply looking at it; that is the only way I know of. It would be marked on the plan.

Q. At the stem would that be 6 plate widths from the bottom on the American-Hawaiian plan?

MR. BOGLE: If you know what that plan is now, Mr. Gardner. If you have that in mind.

A. Why, I could not say positively in regard to that, but it probably would be 6 strakes up from the keel; that is as I have lettered it. It would not be lettered that way in the American-Hawaiian Steamship plan because the stealer would be taken into consideration.

MR. HAYDEN: Q. How would it be lettered in the American-Hawaiian Steamship plan? A. I can't say that positively. I don't know that they have adhere to any fixed rule or regulation in the numbering of their plates or lettering of them. However, they count from the bottom up. The plate landings and butts would all be shown on this shell-plating plan.

Q. Who had charge of the work on the "Virginian" before you arrived at Seattle?

MR. BOGLE: I object to that as being immaterial.

A. I don't know. I suppose that Mr. McGruder, their Superintending Engineer, was in charge of it. I don't recall at the present time whether he was there before I arrived or whether he came after I arrived.

MR. HAYDEN: I want to here demand the production of the plan of plating of the American-Hawaiian Steamship Company of the "Virginian."

MR. BOGLE: I do not think that is a proper demand on an examination of this witness. It does not come under the cross-examination of this witness, and I wish at this time to again object to this line of cross-examination upon the ground that it is not proper cross-examination,—going into matters which were not touched upon on the direct; on the further ground that it is an endeavor to get testimony from this witness or rather get information from this witness which is not proper at this time unless counsel desires to make the witness his own witness.

MR. HAYDEN: Is there any information of this witness you do not want to be introduced in evidence in this case?

MR. BOGLE: You know very well there is not; but I understand your object in trying to get this and using it in your case with other witnesses. If you desire to get that information you can make this witness your own witness. As long as he is a witness for respondent, I object to this line of cross-examination.

MR. HAYDEN: Q. Mr. Gardner, will the plating plan of the American-Hawaiian Steamship Company of the "Virginian" show the thickness of her plates? A. It will.

Q. And the strength of the plates is determined somewhat by their thickness, is it not? A. The total strength, yes.

MR. HAYDEN: I renew the demand on that ground too.

MR. BOGLE: Will you state just what your demand is?

MR. HAYDEN: I want the plan of the shell-plating that the American-Hawaiian Steamship Company has that has been referred to by Mr. Gardner, from which he would be able to determine where F-strake would be and also the thickness of the plates.

MR. BOGLE: So that I will understand what you desire—I do not understand Mr. Gardner to say that the shell-plating plan would show where F strake would be as referred to in his survey report. (Addressing the witness) Is that correct, Mr. Gardner?

A. I said I think that I did not think it would show

the same as my survey report in view of the fact that the stealer would probably be taken into consideration, whereas I have neglected it in my report, and F, as shown on the plating-plan and F, as referred to in my report to be the same plate.

MR. HAYDEN: Q. You said, however, that the plating-plan would show the number of plates from the bottom of the ship at the stem up to the top of it? A. Yes.

Q. And that you calculated from the bottom of the ship up towards the top at the stem when you designated the strakes by the letters that you have placed in your report; so that by taking the plan of plating that is in the possession of the American-Hawaiian Steamship Company and counting A, B, C, D, E, F, from the bottom you would find the plate that you have reference to as Plate F? A. Yes.

Q. That is at the stem? A. Yes.

MR. BOGLE: I have no objection to the introduction of this shell-plating plan at the proper time and upon proper demand, but I do not think it is proper on the cross-examination of this witness.

MR. HAYDEN: Q. Now referring to Libellant's exhibit for identification "F. A. G. 3" and "F. A. G. 4," will you state what they are? A. "F. A. G. 3" was an attempt to get a view of the both bows of the "Virginian," with very little shown. "F. A. G. 4" was an attempt to get a picture of the starboard bow of the "Virginian." Looking at this more closely I wish at this time to make a correction in my testimony relative to the time and place at which these photographs were taken.

Q. Which photographs are you referring to?

A. All four of them. I think I said that 2, 3 and 4 were taken at the same time. Looking at them now I think they were not. I think that 3 and 4 were taken during the time that repairs were being made. A very dim outline of some staging there would indicate that they were probably taken at the Seattle Construction & Drydock Company Ship-yard while repairs were being made.

Q. Now, again referring to your survey report I

notice it says about the frames on the starboard side, as follows: Frames 1, 2 and 3 fractured above tanktop, to be cut out at approved butts and renewed from points of cut to tanktop and be fitted with approved bosom pieces. Frames 4, 5, 6 and 7 badly buckled and bent above tanktop. Frame 7 to be faired in place. Frames 4, 5 and 6 to be cut at approved butts and removed from point of cut to tanktop and to be fitted with approved bosom pieces. Frames 1, 2, 3, 6 and 7 below tanktop buckled and bent, to be faired in place. No. 2 below tanktop found to be slightly fractured, to be removed, welded and returned to place. That is correct, is it? A. In addition by referring to the final report you will see that frame No. 7 was later found to be fractured at first deck immediately above forepeak tank; it is therefore recommended that this frame be cut out, partly renewed and fitted with approved bosom pieces.

Q. With that addition that you have just mentioned the matter above read about the frames on the starboard side is correct, is it? A. Yes.

Q. And showed the damage to those frames as you found it when you made your survey? A. Yes.

Q. Are the frames on the "Virginian" spaced 2 feet or 4 feet apart? A. I think they are spaced, as I stated before, 2 feet apart or about that.

Q. Then the damage to the frames extended at least 14 feet aft of the stem? A. Assuming that that spacing is correct, that would have been the distance, yes.

Q. And if the spacing were greater it would have been greater? A. It would have been greater; and if the spacing was less it would be less.

Q. If less it would be less? A. Yes.

Q. Your recollection at this time is not clear as to the spacing between the frames, is it? A. No; I had no occasion to measure the spacing between the frames for the purpose of restoring the vessel, so I don't recall what it is exactly.

Q. Would that distance be shown on the plating-plan of the vessel; that is, the distance between the frames? A. Yes, it would be shown on some plans.

MR. HAYDEN: I now wish to demand that the

building plans of the vessel showing the frame-work and the distance between the frames be produced.

MR. BOGLE: The plating plans of what vessel?

MR. HAYDEN: Of the "Virginian," the one we are talking about.

MR. BOGLE: I don't know that there are any such plans. Did the witness testify there were such plans?

MR. HAYDEN: I don't know whether there are any. I want them if there are.

MR. BOGLE: The same objection. If there are such plans we have no objection to producing them at the proper time and on proper demand, but we do object to producing them upon this examination.

MR. HAYDEN: I do not expect you to produce them today, but I would like them produced as quickly as convenience will permit; at least by the time you close your testimony.

MR. BOGLE: I have no objection to producing them on proper demand, but I do object to producing them when demand is made upon cross-examination of this witness. This part of the cross-examination is improper; the matter was not gone into on the direct examination.

MR. HAYDEN: For the purpose of further explanation and identification of Mr. Gardner's testimony I introduce in evidence the exhibits marked for identification, referred to as "F. A. G. 1, 2, 3 and 4."

MR. BOGLE: We object to them as immaterial, irrelevant and incompetent.

MR. HAYDEN: Q. How big a vessel is the "Virginian"? A. I could tell by referring to the Register.

MR. HAYDEN: All right.

MR. BOGLE: It is already in the testimony.

MR. HAYDEN: I have not got it; I don't remember what the testimony was about it?

A. According to the records she is 7914 tons gross, built by the Maryland Steel Company in 1903, the property of the American-Hawaiian Steamship Company, 492 by 58-3 by 31-9.

Q. 31-9 depth? A. Yes.

MR. BOGLE: Q. You are reading from what book? A. Lloyd's Register.

MR. HAYDEN: Q. How much weight is there in a vessel of that size? A. I don't know what her displacement is.

Q. Does Lloyd's Register show that? A. No.

Q. Can you give any approximate idea of how much weight is in her, from your experience. A. No, I could not.

Q. Have you any ship constructing tables that give approximately the vessels, recognized as authorities? A. The weight of the vessel could have been determined by taking her length, breadth and draught into consideration and knowing what her coefficient of fineness is. I have not the latter data, nor do I know what her draught is.

Q. That would be shown by her plans, would it not? A. I think so; the displacement scale.

MR. BOGLE: Q. The plans would not show what she was drawing, would it? A. No.

Q. That must be always considered? A. Yes, as I stated in my answer to the other question.

MR. HAYDEN: Q. If the testimony shows that the "Virginian" was drawing 17 feet forward and she was 3 feet deeper aft, can you tell what her weight would be? A. Not without knowing her coefficient of fineness, or block coefficient; but her displacement scale would show all that.

Q. Have you ever been to sea? A. Yes.

Q. How long? A. Well, I was going to sea steadily for about between 6 and 7 years.

Q. How old were you when you commenced? A. I was about 20. I got my first license as an engineer as soon as my age would permit me to get it.

Q. That was when you were 21? A. Yes.

Q. That was a marine engineer? A. Yes.

Q. You went to sea then until you were 27? A. About that.

Q. That is as Chief Engineer? A. In various capacities, from oiler, water-tender, third assistant, second assistant, first assistant, chief Engineer; a great many trial trips in connection with war vessels for the Union Iron Works, battleships, cruisers, gunboats, torpedo-boat destroyers.

Q. The object of your examination or being in charge of the Government ships was in connection with the operation of their machinery, was it not? A. In charge of the entire vessel.

Q. Laying out her courses and navigating her? A. With the assistance of a navigator under my instructions.

Q. The navigator did the navigating of the vessel? A. Yes.

Q. And you looked after the machinery end of it? A. I looked after the entire vessel; the entire vessel was in my charge.

Q. You had nothing to do with her actual navigation at all? A. No.

Q. You never have had any experience of that kind, have you? A. No.

Q. These trial trips lasted for how long say, on the average? A. They would average about a week at a time; more than that, because we would have preliminary trials before making the final official trials; generally extend over a period of possibly a month.

Q. I believe you said that the contact of the "Strathalbyn" and the "Virginian" below the 28½ or 29 foot mark would act as a fender as the two vessels came together? A. That is my opinion.

Q. If it changed the course of the two vessels as they approached it would have a tendency to shift the head of the "Strathalbyn" in what direction? A. I did not say it changed the course of the vessels as they approached.

Q. If it changed the course of the two vessels after they came in contact with each other? A. The tendency would be to force the "Strathalbyn" to her port.

Q. You said something about the winch on the fore-castle head of the "Strathalbyn" being broken? A. I don't remember that I did.

Q. Well, you remember the winch on the "Strathalbyn's" fore-castle head was broken, do you? A. I don't recall that there was a winch there.

Q. Was there a capstan there, a steam capstan? A. I don't recall that there was; I would not be positive.

Q. Do you recall any steam apparatus on the fore-

castle head of the "Strathalbyn"? A. A windlass.

Q. You say there was a windlass there? A. Yes.

Q. What kind of a windlass was it? A. I don't recall the make. I think it was a Napier. I would not be sure, however.

Q. What was the appearance of it? A. Ordinary horizontal windlass such as installed aboard cargo vessels for the purpose of handling the anchors.

Q. Did you observe whether that windlass was broken? A. I think my report refers to it being broken.

Q. How was the anchor chain, the starboard anchor chain arranged on that windlass? A. It was led from the anchor up through the hawse-pipe on to the wildcats on the windlass and from there down through the chain-pipe to the chain-locker.

Q. Was the starboard wildcat broken? A. I could not say now positively without referring to the report, and I am not sure that that specifies particularly whether that was broken or not; in fact, I don't recall just exactly what the damage to the windlass was, though I remember it was damaged.

Q. Can you get that report and refer to it for the purpose of refreshing your recollection? A. Maybe some of these photographs would show it.

Q. Will you please indicate, Mr. Gardner, on "Libelant's Exhibit F. A. G. 5 for identification" the portion of the winch that was broken, taken a pen and drawing out a line from it? A. Well, the windlass was disturbed generally, and this brake device was broken.

Q. Mark it "brake device," as you go along? A. Yes, wildcat, and as I recall at the present time the shaft was found to be sprung. This does not show in this picture. The windlass was taken ashore and it was found necessary to overhaul it generally.

Q. Can you show on this photograph where the starboard anchor-chain sets in that windlass? A. About in here (indicating).

Q. Mark that "chain studding"? A. Yes.

Q. These concave places that succeed each other, going around the windlass, are sockets in which the links of the chain rested? A. Yes.

Q. The wildcat was broken on the port bow of it

and the chain torn off and carried out with the starboard wreckage, was it not? A. I think so.

Q. Now, referring to "Claimant's Exhibit 5-6," will you please indicate on that photograph—I will now say "Claimant's Exhibit 5-6" is attached to Mr. Erismann's deposition—the starboard anchor-chain that sets into the wildcat on "Libelant's Exhibit for identification F. A. G. 5"? A. Yes.

Q. Will you please indicate that by drawing an arrow out from the chain and writing the word "chain," and putting your initials after it? A. Yes.

Q. Is this wildcat a substantially made piece of machinery, pretty strong? A. Made of cast-iron.

Q. It is substantially made? A. It has every appearance of being so, yes.

Q. Strong? A. Yes.

Q. As the "Virginian's" bow was penetrating into the "Strathalbyn" the plating and rivets holding the plating and the anchor-chain and the anchor and the wreckage generally, that is on the port side of the bow of the "Virginian," would have a tendency to hold the bow of the "Virginian" from swinging to port, would it not? A. Yes, neglecting the effect of the underwater portion of the "Strathalbyn." I will add, the underwater portion of the "Strathalbyn" and that portion of the vessel below the point at which the stem was fractured.

Q. Taking into consideration the underwater portion of the "Strathalbyn" and also the portion below which the stem was fractured, would not the wreckage, anchor-chain, that was torn from the starboard side of the "Strathalbyn" have a tendency to hold the "Virginian" after she started to enter the "Strathalbyn" in the same course that she first struck her? A. It would have a tendency to hold her in the same course, but that tendency would in my opinion not be as great as the tendency would be of the portion of the "Strathalbyn" below the point where the stem was fractured to change her course.

Q. The force and effect of the tendency to prevent the "Virginian" changing her course is evidenced, isn't

it, by the damage that was done to the port bow of the "Virginian"? A. Yes.

Q. So far as the plating on the starboard bow of the "Virginian" was cut and fractured the tendency to deflect the course of the "Virginian" after she came into contact with the "Strathalbyn" would be lessened, would it not? A. From my recollection of the case, these cuts and fractures on the starboard bow were not in the way of the portion of that vessel coming in contact with the portion of the "Strathalbyn" below the point at which the stem was fractured; therefore this effect would be almost a negligible quantity, in my opinion.

Q. Is it not a fact that after the shell-plating has been pierced there will not be the same deflecting force that there was before it was pierced?

MR. BOGLE: I object to that upon the ground that the testimony does not show that the shell-plating was pierced at the point below the point where the stem of the "Strathalbyn" was fractured, which the witness testified is the portion of the vessel which deflected the "Virginian."

A. There would not be the same deflecting force if this were the portion of the vessel causing the deflection, which in my opinion it is not.

MR. HAYDEN: Q. The fracture of the plates on the starboard bow of the "Virginian" was caused, was it not, by coming in contact with some portion of the "Strathalbyn"? A. I presume that it was.

Q. How many decks are there on the "Virginian" commencing with the forecastle deck, that is, the uppermost deck at the forecastle or the upper deck? A. There is the shade deck, main deck, between-decks and tanktop, I think; I am not positive about that. I would not be able to answer that without referring to the drawings or the vessel herself.

Q. The shade-deck that you refer to is the uppermost deck on the forecastle head, is it? A. Yes.

Q. Have you any data from which you can tell me what the width of the "Virginian" is or was at the time of this collision, at the 1, 2, 3, 4, 5, 6 and 7th frames, commencing with the shade-deck and going down to her

keel at the stem; that is, I am talking about the forward part of the ship? A. No, I have not.

Q. Referring now to photograph "Libelant's Exhibit F. A. G. 3" for identification and to your knowledge of the *Virginian*, is it not a fact that the wider at the shade-deck and narrows as she goes down from the shade-deck to her keel at these frames, 12, 2, 3, 4, 5, 6, and 7? A. I think she does to some extent. Just what, I have no means of determining at this time, however. I made no measurements of her.

Q. Is it not a fact that the "*Strathalbyn*" was wider at her shade-deck say at Frame No. 4 than she was at the fore-castle head-deck or main-deck? A. The "*Strathalbyn*" isn't a shade-deck vessel. I don't know just what you refer to as the shade-deck. I think the "*Virginian*" is; that was my reason for referring to her uppermost deck as the shade-deck.

Q. In referring to the "*Strathalbyn*" and the shade-deck of the "*Strathalbyn*," I used that term because you used it as the uppermost deck on the fore-castle head? A. She is an entirely differently constructed vessel than the "*Virginian*" is. The "*Strathalbyn*" has a raised fore-castle whereas the "*Virginian*" is a flush-deck vessel, and I think is termed a shade-deck vessel.

Q. I will put the question this way: Is the "*Strathalbyn*" wider across her at the top deck of her fore-castle head than she is at her fore-castle deck, being the one right below it, and the main-deck, and the one below the fore-castle-deck? A. I think she is; that is at that frame. What frame do you refer to?

Q. Frame 4? A. Frame 4, yes, I think she is.

Q. Is she at frame 1? A. I think she is.

Q. If the "*Strathalbyn*" had a list of 6 degrees to starboard and she was struck at the root of her stem on the port side by the "*Virginian*" approaching her from the port, what is your opinion as to whether or not she would list any when she was struck?

MR. BOGLE: I object to that as not being based on any testimony in the case.

A. I don't understand the point referred to as the root of the stem.

MR. HAYDEN: Q. That is, the after end of the

stem, afterside or end of the stem—afterside of the stem would be better? A. Do you mean at the upper or lower part of the stem?

Q. Where in your opinion she struck, the stems came in contact? A. It is my opinion that she did not strike on the port side at all at the lower part of the stem, but at the upper part of the stem she did; in other words she struck absolutely end on and in that way in my opinion struck both sides of the stem.

Q. I understood your testimony to be that you thought the "Virginian" approached the "Strathalbyn" nearly end on? A. Yes, nearly if not quite end on.

Q. Is it your opinion that the "Virginian" approached the "Strathalbyn" and struck the "Strathalbyn's" stem in such a position that a projection of the keel of the "Strathalbyn" forward would coincide with the line of the keel of the "Virginian"? A. No. It is my opinion that a line so projected would have been on the starboard side of the "Virginian."

Q. And your idea is that if a projection of the line of the keel of the "Strathalbyn" had been carried forward, that that line would have been on the "Virginian's" starboard side? A. Yes.

Q. Considering the "Virginian," if the line of her keel were projected forward at the moment of contact, what is your opinion as to its projecting on the starboard side or port side of the "Strathalbyn"? A. On the starboard side of the "Strathalbyn's" keel.

Q. It would have projected on the starboard side of the "Strathalbyn's" keel? A. Yes.

Q. Will you please draw a diagram illustrating your answers to the last few questions? A. Well, assume that this is the stem of the "Virginian."

Q. It is the keel I am talking about? A. Well, I will have to show the stem to illustrate the point. This is the stem of the "Strathalbyn."

Q. So marked? A. Looking toward the "Strathalbyn" assuming the "Virginian" to be without list either to port or starboard, the "Strathalbyn" to be listed 6 degrees, it is my opinion that as the "Virginian" approached the "Strathalbyn" the line of her keel at the center as shown by this dot marked "keel" would be

on the starboard side of the "Strathalbyn's" keel as shown by this other dot marked "keel."

Q. That is clear as far as you have gone. I am talking about projecting the line of the keel, not the stem at all. This has got nothing to do with the stems. I am talking about the projected line of the keel. A. I understand, but the keel position is affected by the position of this.

Q. The line of the keel isn't affected by the position of the vessel? A. Its position relative to the line of the other vessel is.

Q. I am talking about the extension of the line; how far would it have continued on the starboard side of the "Virginian"? A. If as I assume she was dead on it would have been parallel with the keel of the "Virginian."

Q. Then you wish to testify that when the vessels struck each other, the keel of the "Virginian" and the keel of the "Strathalbyn" were parallel with each other? A. Practically so; that is, the line projected would have been parallel with the keel of the other vessel; the keels themselves were not parallel with each other, because one was ahead of the other.

Q. In your opinion, taking into consideration the weight of the "Virginian" and the weight of the water that she would have to displace to change her course and considering the structure of the "Strathalbyn" at her stem and bow, will you state how far the "Virginian" in penetrating the "Strathalbyn" would continue along the line of the direction that they came together in?

MR. BOGLE: I object to the question upon the ground that the witness has already stated that he did not know what the weight of the "Virginian" was.

MR. HAYDEN: I object to the objections of counsel, which are educational in their nature.

MR. BOGLE: Nothing educational about the objections. The witness has clearly stated upon repeated questions as to what the weight and displacement of the "Virginian" were, and told you what elements he would have to have in order to arrive at that and stated definitely he did not have those elements to arrive at the

displacement or weight of the "Virginian," and your question is based upon that very fact.

MR. HAYDEN: Q. Then, for the moment, I will go back to that question again: I will ask you, Mr. Gardner, if without that information you are unable to state whether or not the course of the "Virginian" when and after she struck the "Strathalbyn" would be deflected at all? A. It is my opinion that——

Q. (Interrupting) Just answer that question, Mr. Gardner, as near as you can, yes or no, and then make any explanation you want to afterward. I have asked you without that information, that is, the information as to the weight of the "Virginian" and the weight of the water that she would have to displace, you would be able to tell whether or not the "Virginian's" course would be deflected by her striking and entering the "Strathalbyn"? A. Yes, I think she would commence to deflect as soon as the stem carried away and as soon as she came in contact with the wedgeshape form of that portion of the "Strathalbyn" below the point at which the stem fractured.

Q. Now, how far would she enter the "Strathalbyn" without any deflection that would be noticeable?

A. In my opinion she would start to deflect as soon as she penetrated the stem, whatever the width of the stem is; about 9 inches I think.

Q. Is it your opinion that the deflection would be a deflection at a sharp angle or in the nature of a curve?

A. In the nature of a curve.

Q. You said that the effect of the lower part of the "Strathalbyn" and "Virginian" coming together would be to throw the head of the "Strathalbyn" to port? A. Yes.

Q. Would not that have a tendency to cause the "Virginian" to enter along the same line that she approached the "Strathalbyn"? A. I don't think so. I think they would be both deflected, both to port.

Q. If the head of the "Strathalbyn" were deflected to port and the head of the "Virginian" were deflected to port, there would be some compensation that would make the entrance of the "Virginian" into the "Strathalbyn" nearly along the line of their contract, would there

not? A. It is my opinion that the strength of the material not being as great above as that below on the "Strathalbyn" the deflection would begin as soon as they penetrated the stem.

Q. I do not think you uite got my question. Read the question again.

(Last question repeated by the Reporter.)

A. Assuming the strength top and bottom to be the same the tendency would be in that direction; I assume the strength above is not the same as that below.

Q. If the head of the "Strathalbyn" were deflected 4 degrees to port and the head of the "Virginian" were deflected 4 degrees to port, the line of penetration of the "Virginian" into the "Strathalbyn" would be compensated and consequently perfectly straight along the course that was being pursued by the "Virginian" when she entered the "Strathalbyn," would it not?

MR. BOGLE: I object to that question upon the ground that there is no testimony in the case such as contained in the question, and further object to counsel arguing with the witness.

A. I am not willing to admit that the deflection of the two vessels would have been the same.

MR. HAYDEN: I am only asking you to assume a situation. A. I didn't know that I was discussing an assumed situation. I supposed I was discussing the situation between the "Strathalbyn" and "Virginian" and looking at them from the standpoint and having in mind the difference in strength of the material above and below. I am still of the opinion the deflection would not have been the same on the part of both vessels.

Q. I am very glad to have your opinion, but I want your answer to my question.

MR. BOGLE: I object to the question upon the ground it is immaterial and further on the ground it is a purely hypothetical question based on no testimony in this case.

MR. HAYDEN: Answer my question. A. I do not consider the question complete in making no allowance for strength of material; but assuming the strength to be the same on both vessels above and below the point

at which the stem broke, the direction would have probably been along the same general lines.

Q. You said that the deflection of the course of the "Virginian" as it was passing through the "Strathalbyn" would be on a curve? A. I think probably it would.

Q. What would be the radius of that curve considering the length of the "Virginian"? A. What would be the length of the arc of the curve?

Q. What would be the curve's arc? A. What would be the radius of the circle of which this arc was a part; is that what you mean?

Q. Yes. A. As a mere guess I would say a circle with a radius of 60 feet.

Q. Why do you say that? A. Just guessing at it, nothing else.

Q. What was the basis for your guess? What did you take into consideration? A. The general appearance of the shape of the damaged bow of the "Strathalbyn."

Q. You did not take into consideration any factor of the length of the "Virginian" and the possibility of shifting that length in that distance? A. Yes, in addition to that, taking into consideration the length of time necessary to overcome the inertia of that mass to change its course of direction at all.

Q. How much time did you take into consideration? A. I think that would be practically impossible to determine.

Q. If the testimony of the Captain of the "Virginian" is true that from the moment of contact until the vessels were apart was only the length of time that he had expressed by saying "we were apart within a snap of your fingers," would you consider that length of time long enough to change the course of the "Virginian" from a course that was parallel with the keel of the "Strathalbyn" to a course that was practically $3\frac{1}{2}$ points to the port of the bow of the "Strathalbyn"? A. I would certainly question—I do not see that the length of time in which they were apart after the contact enters into the problem at all. You might assume they had stopped moving.

Q. I said at the time they struck until they were apart. A. Read the question again.

(Last question repeated by the Reporter.)

MR. BOGLE: I object to that question upon the ground it does not accurately state the testimony of the Captain of the "Virginian" and on the further ground that the balance of the question is not based on any testimony in this case.

A. I think that takes into consideration the fact that a portion of the stem of the "Strathalbyn" was found practically 30 feet from its original position and the statement to the effect that the vessels were moving very slowly hardly coincides in view of the fact that probably the stem of the "Virginian" forced the stem of the "Strathalbyn" into the position in which it was found, she would have to travel about 30 feet per second and I hardly think she was traveling that fast.

Q. That is another Irish answer to my question. Will you be good enough to answer my question instead of assuming a lot of things that nobody has testified to or asked you anything about.

MR. BOGLE: That is the very objection to your question, that it contains a lot of hypothetical facts which nobody has testified to.

A. That is the difficulty in answering your question.

MR. HAYDEN: Q. The point is, that is my question, Captain Gardner. Mr. Bogle has put his objection into it. It is for the Court to determine these questions of fact. It is my question that you are to answer, if you do not mind trying to answer it.

A. I am trying to answer it if you would put it in such a way that I could answer it.

Q. You can answer my question and then if you wish to make an explanation afterwards you can make it. Answer my question, if you will be good enough to.

A. Give me the question again and see if I can understand it.

(Last question repeated by the Reporter.)

A. My answer is no. Following that, with your permission, I will repeat, that I do not consider that the vessels could have been going at the speed as indicated

by the condition of the bows of the two vessels, and the statement of the Captain to the effect that the time elapsing was represented by the snap of your fingers.

(By consent an adjournment was here taken until tomorrow, December 5, 1913, at 9:30 a. m.)

Friday, December 5, 1913, 9:30 a. m.

F. A. GARDNER.

Cross-examination resumed:

MR. HAYDEN: Q. Mr. Gardner, if the "Strathalbyn" and the "Virginian" struck directly head on with the keel of the two vessels on parallel lines, if the lines of the vessels were extended, what would be your opinion as to whether or not it would cause the "Strathalbyn" to list?

MR. BOGLE: The "Strathalbyn" to list which way?

MR. HAYDEN: I am asking the question.

A. Shall I assume in answering that she already had a list of 6 degrees to starboard?

Q. Yes. A. I think it probably would have a tendency to increase that list.

Q. Even if they struck directly head on? A. Yes, that is due to the penetrating material and the deflection of the bottom part of the "Strathalbyn"; in that way I should consider that the keel of the "Strathalbyn" would be forced to port and the upper deck forced to starboard.

Q. That would give an increased list to starboard on the "Strathalbyn"? A. I would think so.

Q. Would you think that would cause a heavy list to starboard or a slight list to starboard on the "Strathalbyn"? A. I should imagine it would cause a pretty heavy list to starboard; in fact it would be a sort of twisting effect on the "Strathalbyn," I should think.

Q. It would have the tendency then to heavily roll her keel around to port? A. To port.

Q. And the upper works to starboard? A. That is my opinion.

Q. Have you ascertained since we stopped last night anything more about the form, shape of the bow, of the "Virginian," its sharpness of bluntness? A. No.

Q. As the keel of the "Strathalbyn" would be listed or swung to port by the contact with the bow of the

"Virginian" that would have a tendency to lessen the deflecting force on the course of the "Virginian," would it not? A. Slightly, I should think.

Q. It would depend on the ease with which the "Strathalbyn" gave to this pressure, would it not? A. I think so.

Q. The listing of the "Strathalbyn" by reason of the facts above stated would also have a tendency if the vessels were sharp at the bow to cause the bows or the stems of the vessels to pass each other a considerable distance before any deflecting would take place, would it not?

MR. BOGLE: I object to that. The testimony in this case does not show either one of these vessels were sharp at the bow.

A. I stated in one of my other answers I am of the opinion that the deflection began as soon as they had passed the stems of the vessels.

MR. HAYDEN: Q. What do you assume would be the total deflection in points or degrees of the "Virginian" taking the course that you assume she did take and continuing that course as she struck and entered the "Strathalbyn"? A. I think that the question is impossible to answer, and I do not think that the course remained the same after she struck, that it was continually changing.

Q. I want the total change of course in degrees from the point of contact on the stems of the two vessels until the stem of the "Virginian" passed out of the "Strathalbyn"? A. As a mere guess I should think that possibly the "Virginian" by the time she passed out of the "Strathalbyn" had changed her course possibly 20 degrees.

Q. 20 degrees? A. 15 or 20 degrees.

Q. That is simply a mere guess? A. That is a mere guess. I do not think that I could answer it positively.

Q. If I remember correctly the testimony of Mr. Duffy, the Pilot on the "Virginian," it was that the "Strathalbyn" and the "Virginian" were together, that is, from the time they struck until the "Virginian" had passed into the "Strathalbyn" and backed away again,

for a few seconds; the testimony of Captain Crerar is from 15 to 30 seconds, and the testimony of Beecher, I think is about a minute; I think that is the testimony; they ranged from the snap of the fingers—the time given ranges from a snap of the fingers or something that would be indicated by the snap of the fingers given by Captain Green of the “Virginian” to a minute given by Mr. Beecher. Assuming that that is the time now from the time the vessels struck each other until the “Virginian” has done her damage and backed away, what would you say would be the effect of the blow on the “Virginian” to change her course in 30 feet 20 degrees as to shock? A. I think the shock would have been considerable.

Q. You think it would have been very noticeable on the “Virginian,” do you? A. I should think it certainly would have been noticed.

Q. What would you say as to the extent that it would be noticed?

MR. BOGLE: Q. If you can answer that question, Mr. Gardner, from the facts that he has given you?

MR. HAYDEN: Naturally, I expect him to do that.

MR. BOGLE: If you cannot, say so.

A. Which of these three different times given me am I expected to take into consideration?

MR. HAYDEN: Q. Any of them and explain which one you are taking into consideration when you are giving your answer. A. If it were done in the time represented by the snap of the fingers, it would have been very noticeable; had it taken a minute it would not have been so noticeable by considerable.

Q. It would not however be called ordinarily a slight shock, would it? A. I think not.

Q. Even with a minute it would not be called a slight shock, would it?

MR. BOGLE: I object to that. Slight shock might mean an entirely different thing as stated by different men. What the witness might call a slight shock and what another witness might call a slight shock might be entirely different; that is a relative term.

A. The yielding of the material on the two vessels

would have lessened the impression given I should imagine as to its being a heavy shock; therefore it might possibly have been described as a slight shock, if the time extended were a minute, I should think.

MR. HAYDEN: Q. I am not talking now of the yielding of the material. Just keep in mind the question that is asked, if you can, Mr. Garder. I ask you if the course of the "Virginian" were changed 20 degrees in a distance of 30 feet, in the time of a minute, would that cause a slight or severe shock to the "Virginian"? A. With a mere change of the course, I do not consider it would cause any very great shock.

Q. In the course of a minute? A. In the course of a minute, neglecting the contact of the two vessels.

Q. Would you consider the change of the course of the "Virginian" would cause a shock, changing that course I mean 20 degrees, within from 15 to 30 seconds? A. Not the mere changing of the course, no.

Q. Can you change the course of the "Virginian" 20 to 30 degrees in the course of 15 to 20 seconds by contact with a loaded ship without causing a shock? A. Contact would cause a shock, certainly.

Q. Would that shock be a severe shock or a slight shock?

MR. BOGLE: I object to that. The witness has not stated that there was any possible change of 30 degrees.

A. I should think it might be described as being a rather severe shock.

MR. HALDEN: Q. Didn't you take any pictures of the "Strathalbyn" when she was in the dry-dock at Esquimalt? A. I believe I did.

Q. I want to see if you have got a picture there that shows a certain thing. Would you mind letting me see what you have? A. No.

Q. Mr. Gardner, looking at these photographs attached to Mr. Jack's deposition, "Libelant's Exhibit X 18," what caused the part that is shown in the exhibit with the port anchor-chain hanging to it to assume the position that it is now in? A. Well, as I said before, I think the upper part of the stem was struck on the port side, and as the vessel passed it hauled this plate around

before it finally parted and was left in that position when it finally did part.

Q. What caused it to assume the position it is now in? That is, to bend and remain in that location? A. Due to the fact that it had been pulled around by the stem of the "Virginian" as it took the stem of the "Strathalbyn" past its points of elasticity and naturally remained there.

Q. Did you notice whether or not any of the beams were bent on the "Strathalbyn"? A. My recollection is that some of them were bent.

Q. Is it your opinion that this bending of the upper part of the stem of the "Strathalbyn" around on to the starboard side and the lower part of the stem of the "Strathalbyn" to the port was caused by the contact with the side of the "Virginian"?

MR. BOGLE: I object to that upon the ground that the photograph does not show the upper part of the stem as bent to the starboard side. The witness has not so testified.

MR. HAYDEN: Q. To make it clear, instead of saying the upper part of the stem was bent to the starboard side, we will say the plating on the bow was bent over to the starboard side? A. I think probably the bending was caused by coming in contact with the bows of the "Virginian" as she entered into the "Strathalbyn." As I said before, I think that it was forced over by the original blow.

MR. BOGLE: Q. You are speaking now of the upper part? A. Of the upper part.

MR. HAYDEN: Q. And the lower part? A. And the lower part I think was forced over by the lower part of the "Virginian."

Q. That is, the starboard side of the "Virginian" coming in contact with the lower part of the stem of the "Strathalbyn" forced it over so that the lower part of the stem of the "Strathalbyn" coincided with the plating on the stem of the "Virginian"; is that it? A. I think so.

Q. How far below the 29-foot mark or 28-foot 6 mark, where the break in the stem of the "Strathalbyn" appears, did the stem and plating appear to be bent over

to port? A. My recollection is that it was affected practically down to the forefoot.

Q. How far does the forefoot come up above the keel? A. Probably 4 feet, as near as I can recall.

Q. I understood you to say yesterday that they renewed the stem of the "Strathalbyn" from the 14-foot mark up? A. I don't recall making that statement.

Q. Do you know how far it was from the windlass on the forecastle head to the stem of the "Strathalbyn"? A. No, I do not.

Q. Do you know how near the starboard end or wildcats of the windlass on the forecastle head of the "Strathalbyn," the forecastle-deck, was cut away? A. I don't recall now, no.

Q. Mr. Gardner, you said that you understood that you appeared in the interests of both Underwriters. I would like to know the reason for your so understanding? A. Well, I was sent to the two vessels by Lloyds' Agents in San Francisco, whom I supposed were representing the both Underwriters, and I said in my testimony yesterday I later had a letter from Lloyds' Agents instructing me to return to the "Strathalbyn" to follow up her repairs.

Q. Do you know whether Lloyds' Agents asked you to do that on behalf of the "Virginian" or on behalf of the "Strathalbyn"? A. I don't know positively.

Q. You do know that Lloyds had some insurance on the "Virginian," do you not? A. No, I do not. I do not know anything about the insurance of these vessels at all any more than I was led to believe that there was insurance on them.

Q. You said you were aboard of the "Strathalbyn" in Tacoma after the major portion of the forward deck load was on her? A. Yes.

Q. And you and Captain Gibbs went aboard of her. Do you remember that I met you at the dock and we went over in the same launch? A. I believe we did.

Q. At the time that you and Captain Gibbs were over there, they were still putting the deck cargo, forward-deck cargo on the "Strathalbyn," were they not? A. Yes.

Q. They had not completed loading? A. They had not quite completed, apparently.

Q. They had not at that time put any lashings on either the deck-cargo or the stanchions, had they? A. I would not be positive as to that.

Q. They were however still loading the deck cargo over the side of the vessel? A. Yes.

Q. What is the usual time of lashing the cargo on, after they complete the loading or before? A. I do not consider myself competent to answer questions relative to proper methods of loading vessels; it does not come within my province.

Q. You would not wish to state then that when the deck-lashings were put on the cargo and the lashings on the stanchions were drawn up, the stanchions would not be within the lights?

MR. BOGLE: I object to that; he has not testified as to when the loading was completed, when the cargo was loaded.

MR. HAYDEN: I accede to your suggestion. You needn't answer the question. Where did you stand on the forecastle head of the "Strathalbyn" and look aft and see the lights? A. At the break of the forecastle and afterside of the forecastle, I think.

Q. On which side? A. On both sides.

Q. Did there appear to be any difference in the view of the lights from either side? A. I did not notice any difference.

Q. You said the light, if I remember correctly, would be deflected with the stanchions in the position they were in 15 degrees—10 to 15 degrees? A. Yes.

Q. From the center of the light? A. That is merely an opinion. I made no calculation. I don't know that it could be made.

MR. BOGLE: I do not think he said from the center of the light.

MR. HAYDEN: I have a note here, at a point parallel with the center line? A. The center line of the ship is what I referred to.

Q. Now, at a point parallel with the center line, what point did you take to commence with, to get your parallel? A. By sighting along the stanchions.

Q. Did you take the stanchions to be parallel with the keel? A. Not entirely, no.

Q. Well, I would like to know what point you started with,—whether the light or where you were standing as the particular point? A. I looked at it from various positions; at sometimes from a point aft looking directly over the light-screens and at other times from the fore-castle-head and looking aft toward the light-screens.

Q. You are talking about a line parallel with the keel. I want to know how far up from the keel that line would be located, or if you can not give the distance, what point on the ship you located that line? A. Approximately 15 feet, I should say from the center line—15 or 16 feet. Of course it would depend entirely on memory; it is very difficult to state the distance as I made no measurements of the vessel. We noticed there was a point where the light-screens seemed to be obscured. The vessel has a considerable tumble home.

Q. Was that point 15 or 16 feet from the center of the keel outside of the line of stanchions or inside of the line of stanchions, through which you drew your line to get a parallel? A. I should think it would be about the center of the stanchions.

Q. About the center of the stanchions? A. Yes.

Q. Now, as a matter of fact, the deck of the "Strathalbyn" is narrower towards the break of the poop than it is at the break of the house, or where the lights are. At what point between the break of the house and the break of the fore-castle would your parallel line run through on the rail, half way or a third way? A. It would not be on the rail at all; it would be inside of the rail.

Q. Well, inside of the rail. A. It would be parallel with the center line of the ship.

Q. When you said the light would be deflected 10 or 15 degrees, did you figure that that deflection would be measured from the lamp? A. From the lamp, yes.

Q. That is what I am trying to get at. Then your parallel line would be from the lamp, would it not? A. From the lamp to the point on the fore-castle forward, from the point that I took as being parallel with the

light-screens to a similar point on the forecastle, that I could not see the screens at all.

Q. You were paying considerable attention, were you not, to the light-screens and the possible obstruction of the stanchions of the lights? A. As I stated before in my testimony, it was merely called to my attention by the fact that the repairs on the forecastle head caused me to be there and happening to look aft while I was on the forecastle, and not being able to see the screens I thought it was well to call Captain Gibbs' attention to it; he is interested in loading cargoes on the Sound, and I asked him to come over and look at it.

Q. The only time that you knew Captain Gibbs was on the vessel to take a look at the lights was the time that you and he went on there while they were loading? A. That is the only time I have any knowledge of, yes.

Q. And you and he were there only once together looking at them? A. To the best of my recollection we were only there once; that is, for that purpose. I was there from day to day while they were making these repairs on the forecastle-head, as I stated before.

Q. How closely did you follow these repairs, Mr. Gardner? A. More with a view to seeing that the repairs were completed, to see that they had been completed; they were of minor importance, but still necessary to restore the vessel to the condition that she was probably in before she sustained damage. The only item that occurs to me at the present time was a mooring-chock that had not been fitted in place.

Q. That is at Tacoma? A. At Tacoma.

Q. But at Esquimalt you also followed the repairs, did you not? A. Yes.

Q. Some of the bills in this case bear your signature; if I remember correctly, the expression is "Approved subject to adjustment"? A. Yes.

Q. I understand that that "subject to adjustment" means the average adjustment?

MR. BOGLE: I object to that. Ask the witness what it means. He signed them in that way.

MR. HAYDEN: Q. Is that right? A. In a general way that I suppose is what the intention is.

Q. What do you understand to be the effect of approving bills subject to adjustment? A. Merely that the bills are correct to the best of my knowledge and belief and are left subject to such adjustments as may be found necessary.

Q. Where would that adjustment take place and what would be the nature of it? A. I don't know.

Q. I now call your attention to "Libelant's Exhibit X-3," being a bill of the British Columbia Railways Company, dated "Victoria, B. C., March 7, 1912," and ask you if that is your signature? A. Yes.

Q. I will ask you if what I am now to read is in your handwriting, viz: "Approved subject to adjustment, F. A. Gardner, Surveyor for Underwriters"? A. Yes.

Q. Wherever you so approved any of the bills what was your understanding at the time you approved them of the term "Approved subject to adjustment"? A. It indicated that I had seen the work performed and in my opinion the bills were correct. Whether they were chargeable to damage account or owner's account, or whatever it might be, was subject to adjustment on the part of the adjusters.

Q. Mr. Gardner, do you remember whether there was any difficulty in looking over the light-screens on the "Strathalbyn" by reason of the location of the boat-davits immediately back of the light-screens on the port side? A. I don't recall any material difficulty at the present time.

Q. The first boat-davit aft of the after end of the light-screen is how far from the aft of the end of the light-screen? A. (Interrupting) I don't know.

Q. You have no recollection of that at all? A. No.

Q. The beams on the "Virginian" are separated and connected by frames running across the ship, are they not? I am talking about the beams of the forward part of the "Virginian" around the bow or stem? A. The beams run across the deck, under the deck.

Q. What are they connected with? A. Connected by brackets to the frames.

Q. Has every frame a beam connecting it? A. I think not.

Q. In the lower part of the ship has it? A. I am not positive of that, however.

Q. The decks are fastened to the beams, are they? A. Yes.

Q. What kind of decks did they have—of what kind of material were they made in the “Virginian”? A. Steel-decks.

Q. Do you know the thickness of the plating? A. I do not, no.

Q. Approximately do you know? A. No.

Q. When you speak of breast-hooks, what do you mean by that? A. It is a steel plate connecting stringers at the forward end of the ship.

Q. And the stringers are what? A. Longitudinal stiffeners.

Q. And the breast-hooks connecting stringers with what? A. With each other.

Q. The stringers are how far apart? A. I don't recall what distance apart the stringers were. There is a stringer on each deck, and below the lower deck there are other stringers; how many there are or how far apart they are, I don't recall.

Q. Do the breast-hooks connect the ends of the stringers together or do they connect the stringer above to the one below? A. Connect the ends of the stringers together.

Q. On the “Virginian” at what depth did you find the lowest damage to her on the starboard side? A. I don't recall at the present time. There was some damage below the forepeak tanktop; just how far I don't recall just now.

MR. HAYDEN: I think that is all.

RE-DIRECT EXAMINATION.

MR. BOGLE: Q. Mr. Gardner, I hand you a report of the Steamer “Virginian” dated January 29, 1912. Is that a true copy of your report of survey? A. It is.

MR. HAYDEN: As far as the reports are concerned, referring to the recommendations, and what is purely hearsay, I do not want to be understood as stipulating that that may go in as Mr. Gardner's testimony, but simply as far as it refers to the damage he observed.

MR. BOGLE: I understand that; I am willing that that should not be considered as part of the exhibit.

Q. Is that a true copy of your report of survey on the steamer "Virginian"? A. To the best of my knowledge and belief it is, yes.

Q. That is the copy from which Mr. Hayden has been examining you at this hearing, is it not? A. Yes.

Q. I hand you a report of survey on the steamer "Virginian" dated February 17, 1912; is that a correct copy of your original report of survey and final report of survey on the steamer "Virginian"? A. Yes.

MR. HAYDEN: I would like you to try and get the original, if you can possibly anywhere, to see as a matter of fact that the original is the same as this; there may be some slight changes by interlineations or otherwise, I don't know.

MR. BOGLE: We can cover that by stipulation.

(It is stipulated by the parties that the original reports of survey may be introduced in evidence by either party in place of the carbon copies which have been identified, the original reports to bear the same identification number.)

MR. HAYDEN: Subject of course to the above objection as to hearsay statements in the reports?

MR. BOGLE: Yes.

Q. Mr. Gardner, referring to "Libelant's Exhibit for identification F. A. G. 1, 2, 3 and 4", I will ask you if those photographs enable you to accurately state the damage to the steamship "Virginian"? A. No, they do not.

Q. In testifying from these photographs are you testifying from your actual knowledge of the damage or from what the photographs apparently show? A. From what the photographs apparently show.

Q. In making your survey of the damages state just what examination you made in order to arrive at the exact nature of the damage to the "Virginian"? A. Well, I visited the ship on two or more occasions and took a record of the material found to be damaged through observing this material from the outside of the

vessel as far as it could be seen and by going down into the vessel's hold, forepeak tank and so forth.

Q. Is it possible, Mr. Gardner, to arrive at the exact nature of the damages without an interior examination of the plating of the ship? A. No, because a plate may appear to be bent on the outside and an interior examination will disclose the fact that it is fractured on the inside.

Q. Does your survey of damage that has been produced here as "Libelant's Exhibit for identification Y-1" accurately show all of the damage that you found in the steamer "Virginian"? A. I think it does, yes.

Q. Does that show any damage which you could not ascertain from those figures? A. Yes.

Q. In speaking of photographs, I mean "Libelant's Exhibits F. A. G. 1, 2, 3 and 4"? A. Yes.

Q. Mr. Gardner, you stated upon your cross-examination that you did not make any drawings affecting the repairs on the steamer "Virginian". Did anyone to your knowledge make any such drawings? A. Not that I have any recollection of.

Q. Is it necessary, Mr. Gardner, to make such drawings in order to effect the necessary repairs and place a vessel in the same condition that she was before the collision? A. There may be some details that it would be advisable to make sketches of before proceeding with the repairs.

Q. Do you refer to any particular details? A. I do not recall any in connection with this particular case that would be necessary to make sketches of, to enable them to make repairs.

Q. In order to sufficiently replace broken or fractured plates, frames and so forth, is it necessary to make drawings of the injured or damaged plates and frames? A. No, measurements can be taken from the plates and frames themselves.

Q. Is it customary for surveyors in charge of repairs to make such drawings, Mr. Gardner? A. I really could not testify as to the custom prevailing on that point.

Q. Is it your custom to make such drawings? A.

I make drawings occasionally, but I do not see that it could be considered to make drawings in connection with making these repairs.

Q. From your examination of the damage to the "Virginian" and the "Strathalbyn" could you state the comparative strength of the plates and frames, the structure of the two vessels? A. Only in a very general way; I should say that the general structure of the "Strathalbyn" was considerably lighter than that of the "Virginian."

Q. In speaking of the plating plans of the American-Hawaiian Steamship Company, what did you refer to? Do they have one plan of plating covering all vessels, one that applies to all vessels owned by them? A. I don't know what they have in their possession; but they probably have a plating plan showing the sizes of the plates and the pitch of rivets and the shape of the plates.

Q. What I am getting at in connection with that is Mr. Hayden's demand. I want to find out whether they have one plan that applies to all vessels or whether each vessel has a separate plan? A. Each vessel would have their own plating plan.

MR. HAYDEN: Mr. Bogle, it is with respect to the "Virginian", not any other boat, that I made demand.

MR. BOGLE: I am trying to get concrete information in order to comply with your demand if I deem it necessary, in making a request upon the American-Hawaiian Steamship Company.

Q. On your cross-examination you stated you were at sea for seven years in various capacities, and in connection with your work in the Union Iron Works that you had charge of trial trips, builders' trips of various vessels. Did your connection with those vessels and your connection with the Union Iron Works cover any construction and repair work? A. Yes. It covered construction work prior to trial trips and repair work in many cases after trial trips.

Q. What was your connection with the work? A. That of general supervision.

Q. Mr. Gardner, referring to "Libelant's Exhibit

for identification F. A. G. 5", which, as I understand, is the windlass on the forecastle deck of the "Strathalbyn", where was that windless placed on the forecastle deck; do you remember how far aft from the stem? A. No, I don't. I made no measurements of its exact location.

Q. Where was it placed with respect to the amidships portion of the forecastle deck; in other words, was it on the starboard side or port side? A. I suppose it was on the amidships line; they usually are. I made no measurements to ascertain whether that was absolutely a fact or not. That is on the fore and aft line.

Q. It would be practically amidships? A. Yes.

Q. Is there any portion of this windless which is known as the drum of the windlass? A. I don't know of any part of the windlass that is usually referred to as a drum, unless it might be the wildcat,—not a wildcat but a gypsy; that is not shown here; that might be called a drum. Sometimes a windlass is equipped with an extension to the main shaft with a gypsy, and that may be called a drum; that is used for warping vessels in.

Q. Where would that be located? A. It would be on the end of this shaft going through.

Q. It would be at the extreme righthand side? A. Probably near the righthand side, and one on the left-hand side where the gypsy was fitted to the windlass; they are usually so located.

Q. It does not show in that exhibit? A. No,—at least I do not see it, and I do not recall whether it was so fitted, or not.

Q. Mr. Gardner, I believe you testified that the chain, anchor-chain, would set in the portion that you have marked "chain-setting" here? A. Yes.

Q. And would then run aft? A. It would run forward to the hawse-pipe.

Q. Run forward to the hawse-pipe and there connected to the anchor? A. Yes.

Q. The anchor hangs over the side of the ship, or hangs in the hawse-pipe? A. I think in this case that the anchors were stowed in the hawse-pipe; I don't recall positively; sometimes they are stowed in the hawse-pipe

and sometimes they are stowed on the billboard on deck. I think in this case, however, they were stowed in the hawse-pipe; perhaps this photograph will show that.

MR. CAMPBELL—Q. A patent anchor? A patent anchor stowed in the hawse-pipe.

MR. BOGLE—Q. The contact of the vessels carrying away the starboard plating and structure at the line of the forecastle deck would of necessity carry the anchors with it, would it not? A. Yes.

Q. That would necessitate the running of the chain, dragging of the chain? A. Dragging the chain over the wildcat.

Q. I think you stated on cross-examination that the tendency of the wreckage on the starboard side, which would include the plating and this starboard anchor and the anchor-chain would have a tendency to hold the "Virginian" in the course in which she struck? A. To some extent, yes.

Q. And that the tendency of the lower plating of the "Strathalbyn", which I understand in your testimony, is stronger than the upper structure, would be to throw her off to port? A. By "her" you refer to the "Virginian" I suppose?

Q. Yes. A. Yes.

Q. And the resulting deflection of the "Virginian" if any would depend upon the relative strength of the materials exerting these tendencies; that is, the relative strength of the upper materials compared with the lower materials? A. I think so.

Q. What is your opinion as to the resulting tendencies on those two forces as to deflecting or holding the "Virginian" in her course? A. The resulting tendency would be to deflect the "Virginian" to port, in my opinion.

Q. In answering one of Mr. Hayden's questions you estimated, as you said, as a mere guess, the "Virginian" might have been deflected 15 or 20 degrees after she came in contact with the "Strathalbyn"; that is correct, is it? A. As near as I can judge.

Q. I understand it is a mere guess? A. Yes.

Q. How did you arrive at that conclusion, Mr.

Gardner, that is, of placing your figure at 15 or 20 degrees; in other words, what do you take into consideration in arriving at that estimate? A. By drawing a mental picture of the general condition of the vessels' bows after the damage.

Q. Would the extent of deflection of the "Strathalbyn" have any bearing upon the extent of the deflection of the "Virginian"? A. I think so, because I took into consideration that she was probably deflected also.

Q. Could you estimate the amount of deflection on the part of the "Strathalbyn"? A. I would say due to the yielding of the material on the "Strathalbyn" that she would not have been deflected to the same extent that the "Virginian" was, and also due to the fact that she was a loaded vessel and the "Virginian" was in comparatively light condition.

Q. Would it not be a fact that if the "Strathalbyn" was deflected more than that the "Virginian" would be deflected less? In other words, have you taken the actual deflection of the "Virginian" or have you taken the damage and estimated from that the deflection of the two vessels? A. My answer to Mr. Hayden's question was as applied to the "Virginian" only, and did not take into consideration any deflection of the "Strathalbyn".

Q. If the "Strathalbyn" was deflected to any appreciable extent would your answer as to the deflection of the "Virginian" be any different? A. No, I think not.

Q. On cross-examination by Mr. Hayden, he asked you a hypothetical question which I understood—I may be mistaken—in which he asked you what the effect on the "Strathalbyn" would be if the "Virginian" had struck the after side of the "Strathalbyn's" stem—did you understand what he means by the after side of the stem? A. I understand what the after side of the stem would be, yes.

Q. Do you think it possible for the "Virginian" to have struck the after side of the "Strathalbyn's" stem if they were approaching each other in a direction from head on or nearly so? A. Not absolutely the stem of

the vessel itself; they might have struck the plating on the after side of the stem if they were striking at right angles or something of that kind.

Q. Could she have struck the after side of the stem from any direction except approximately a right angle?

A. Yes, I think she could have struck it at an angle less than a right angle, that is, struck the plating.

Q. I mean the after part of the stem itself? A. No, I don't think so.

Q. I think you said that if the "Virginian" struck the "Strathalbyn" end on, that the keel of the "Virginian" and the keel of the "Strathalbyn" were parallel at the time of contact, not the keels themselves but that lines drawn and extended from their keels— A. (Intg.) Would be parallel.

Q. Would be parallel? A. Yes.

Q. Of course that would only apply if they struck absolutely head on? A. And with the vessel listed, the "Strathalbyn" listed.

Q. I understood from your testimony that it is your opinion that they struck absolutely head on? A. Practically so, I think.

Q. If the "Virginian" struck at any angle on either bow, no matter how small, would their keels be parallel? A. No, I think not.

Q. I think you also stated that a line drawn forward from the keel of the "Strathalbyn" at the time of collision would have been on the starboard side of the "Virginian"? A. I did.

Q. That, Mr. Gardner, is due to the list of the "Strathalbyn", is it not? A. Yes.

Q. If there had been no list the keels would have been directly in line? A. Yes.

Q. If, as a matter of fact, the "Virginian" was not deflected to any appreciable extent by the collision, what would you say, considering the nature of the damage to the two vessels, as to the deflection of the "Strathalbyn" caused by the collision? A. There probably was some deflection of the "Strathalbyn".

Q. I understand that it is your opinion that there

was some deflection on the part of both vessels? A. That is my opinion, yes.

Q. Mr. Gardner, Mr. Hayden asked you a purely hypothetical question, which I understood to be approximately as follows: That if the "Strathalbyn" was deflected 4 degrees to port by the collision and the "Virginian" was deflected 4 degrees to port by the collision, if the deflection of the two vessels would not be compensated so that the line of approach would be approximately the same, so there would be no deflection. (Addressing counsel.) Am I mistaken in that?

MR. HAYDEN: That is practically it.

MR. BOGLE: Q. Now, Mr. Gardner, if that had been a fact, would not the deflection of the "Strathalbyn", 4 degrees to port, and the deflection of the "Virginian" 4 degrees to her port, have had the tendency of throwing the two vessels in entirely diametrically opposite positions from each other? A. I probably did not understand Mr. Hayden's question, referring to compensating for direction. I took it as meaning the line of force being in that general direction; but as a matter of fact, I think as you state, the vessels would be deflected in opposite directions.

MR. HAYDEN: Q. My question was if when the bow of the "Virginian" entered the "Strathalbyn" and continued in if it would not continue along a line that would be practically the same line that it would if there was no deflection? A. I don't think that it would. I did not understand the question in that way.

MR. BOGLE: I did not understand what Mr. Hayden meant by the compensation. A. I took it as meaning the line of force being in that general direction.

Q. If as a matter of fact the two vessels were deflected 4 degrees each to their port, would not the effect of that be to throw their bows away from each other? A. I think it would, yes.

Q. If at the time of this collision the "Strathalbyn" had a list of 6 degrees to starboard, if the "Virginian" struck her, which you stated to be your opinion, practically end on, would not the list, resulting list on the "Strathalbyn" depend somewhat on the strength and the yielding of the materials? A. Yes, I think it would.

Q. I don't know whether I correctly understood you, but my impression is you stated in answer to Mr. Hayden's question it would increase her list to starboard? A. That is my opinion, yes.

Q. What would be the effect of the bluff of the bow of the "Virginian" coming in contact with the upper structure of the "Strathalbyn" as she proceeded into the "Strathalbyn"; in which direction would that tend to list the "Strathalbyn"—the bluff of the "Virginian's" starboard bow? A. The bluff of the "Virginian's" starboard bow would have a tendency to right the "Strathalbyn", in my opinion.

Q. And would list her in what direction? A. To right the list that she already had to starboard and bring her more in an upright position.

Q. By the resulting list to port, you do not mean that she would necessarily overcome the 6 degrees to starboard list? A. No, I don't think that she would overcome the starboard list but the tendency would be towards port.

Q. And what would tend to list her to starboard? A. The bow coming in contact with the material that was later found hanging out on the starboard bows of the "Strathalbyn", the stringers and decks and so forth, that she penetrated.

Q. Would it not be a fact then, Mr. Gardner, that the resulting list of the "Strathalbyn" would depend upon the relative strength of the materials, that is, the result of the two tendencies?

MR. HAYDEN: I would like to object to this line of investigation of Mr. Gardner as an expert unless he furnishes us with the data accurately on which to estimate this resulting force; that data must consist of knowledge of the structure of the two vessels, the thickness of her plating, their general construction, and a statement of the resulting forces on one side or the other, as well as the resistance.

MR. BOGLE: I am perfectly willing to stop this line of examination if you are willing to strike from the record the portion of your examination on the same lines.

MR. HAYDEN: I move to strike out Mr. Gard-

ner's re-direct testimony along the same lines as the last question. I will state that that in the cross-examination I wish to remain in evidence to show the fact that Mr. Gardner had not taken into consideration the data that I am now requiring him to take into consideration on re-direct testimony.

MR. BOGLE: I am not asking Mr. Gardner as to his knowledge of such data. I am asking him if that data would not have some effect upon the answers which he has already given upon your cross-examination. Read the question. (Last question repeated by the Reporter). A. I think it would.

Q. Would not the amount of shock noticeable aboard the "Virginian" as the result of this collision depend upon the resistance of the materials of the "Strathalbyn" and also upon the speed of the two vessels at the time of the collision? A. It would, in my opinion.

Q. Have you any information within your knowledge from which you could make any sort of accurate estimate as to the amount of shock noticeable on the "Virginian" as a result of this collision? A. I have not.

Q. Mr. Hayden asked you on cross-examination if the lower part of the "Strathalbyn's" stem did not coincide with the "Virginian's" plating. I confess that I did not quite understand the question. I wish you would explain that answer you made to it, Mr. Gardner. A. Well, assuming that the "Virginian's" bow was of more or less wedge-shape taken from the deck, shade-deck down to the keel, if the stem were forced over to port by the starboard bow of the "Virginian", the angle of that stem as it came to rest would coincide with the angle of the plating of the bow of the "Virginian",—as I understood the question. That was my idea in answering it in that way.

Q. Would that be the "Virginian's" bow as she came to rest? A. As both vessels came to rest.

Q. The "Virginian's" bow in your opinion deflected the lower part of the "Strathalbyn's" stem? A. That is my opinion. By the lower portion I mean the upper part that was attached to the vessel's keel; not that part that was carried away entirely and on the side of the "Strathalbyn".

Q. You have heretofore stated that that portion of the "Strathalbyn's" stem was one of the tendencies to deflect the "Virginian's" course? A. Not the stem alone.

Q. I say one of the forces? A. One of the forces.

Q. As the two vessels came to rest the plating of the "Virginian" would be in contact with the lower portion of the stem of the "Strathalbyn" and in a general way that stem would be in the shape of that portion of the "Virginian's" plating; is that what you mean by that? A. That is my idea; but referring to the upper portion of that remaining on the "Strathalbyn", not clear to the forefoot, because the pressure of the "Virginian" against that upper portion of the stem remaining on the ship would have a tendency to bend it below the point the two vessels were really in contact, probably.

Q. I believe that you stated that you were Lloyd's Surveyor? A. Surveyor to Lloyd's Registry.

Q. Is it or is it not common for such surveyors to be called in to survey both vessels which have been damaged, as you were called in in this case? A. Yes.

Q. On "Libelant's Exhibit for identification X-3" which you signed "Approved subject to adjustment, Fred A. Gardner, Surveyor for Underwriters", I also notice the statement "Approved without prejudice", signed "William H. Logan, Surveyor for Underwriters". I wish you would state who Mr. Logan is, and what his connection is?

MR. HAYDEN: I think that has already been gone into.

MR. BOGLE: We will put it in again. A. Well, I understood Mr. Logan—

MR. HAYDEN (intr): I object to what you understand. I want to know what you know.

MR. BOGLE: Q. Who is Mr. Logan?

MR. HAYDEN: Q. Of your own personal knowledge? A. Captain Logan to my own personal knowledge has had charge of work for the London Salvage Association, and to the best of my knowledge and belief was acting in that capacity on this particular occasion.

Q. What is the meaning there of "Approved without prejudice", "Surveyor for Underwriters"? A. I don't know the meaning of that expression.

Q. Do you know in what capacity Mr. Logan was acting in approving these bills in that manner? Did you understand that he was acting for the owners or for the Underwriters?

MR. HAYDEN: I object to what Mr. Gardner understood. I want to know what he knows.

MR. BOGLE: Go ahead and answer it, Mr. Gardner? A. My understanding was that Captain Logan was representing the Underwriters, as my instructions were to cooperate with Captain Logan, and my understanding was that I was representing the Underwriters.

Q. Was that the Underwriters on one or both vessels?

MR. HAYDEN: I object to that. He has already explained that. A. In this particular case the Underwriters on the "Strathalbyn".

MR. BOGLE: Q. I notice also in this same exhibit this notation: "O. K. Charles P. M. Jack". Who is Mr. Jack? A. Mr. Jack stated to me that he represented the owners of the "Strathalbyn".

Q. Is that an ordinary and common way for a surveyor representing the owners to approve bills? A. I see nothing unusual about it.

Q. Mr. Gardner, in sighting along the line of the stanchions on the "Strathalbyn" in the harbor at Tacoma at the time you have testified to, I believe you said that you sighted at least once from a position on the light-screens or the light-box. What I mean is, you were upon the lower bridge aft of the light-screens and light-box and sighted along the line of the stanchions? A. Yes.

Q. Is or is it not a fact Mr. Gardner, that the light-screen on a vessel, the inboard light-screen is required to be constructed so that it should be parallel with the line of the keel of the vessel? A. I think it is required that it should be so constructed.

MR. HAYDEN: I object to that upon the ground it is not the best evidence and a mere surmise on the part of Mr. Gardner; I move to strike out the answer.

RE-CROSS EXAMINATION.

MR. HAYDEN: Q. Ordinarily two vessels striking end on, would the lighter loaded vessel, the lighter vessel, receive a greater shock than the heavier loaded vessel? A. Yes, assuming the strength of the vessels to be the same and neglecting the yielding of materials.

Q. The yielding of the material would have a tendency to lessen the shock on the vessel whose material yielded, would it not? A. I think so, yes.

Q. You don't know anything about the speed of the two vessels at the time they came together, do you? A. I do not.

Q. You said, Mr. Gardner, that you believed these vessels struck practically end on, that is, so that the extension of the line to their respective keels would be parallel with each other? A. Yes.

Q. What do you mean by "practically"?

MR. BOGLE: I object to that question; he has stated exactly what his opinion as to the angle of contact was. A. Neglecting any technical or microscopic measurement that might be taken in connection with a matter of that description, as would be viewed from a practical standpoint.

MR. HAYDEN: Q. Then there might be some variation in the line of the keel as extended as they struck each other from the parallel? A. Not from a practical standpoint, in my opinion.

Q. Well, when you say practical, you mean that the "Virginian" might have been approaching the "Strathalbyn" either from the starboard side or the port side? A. It is my opinion that she was approaching the "Strathalbyn" from directly ahead.

Q. So that if the "Strathalbyn" had been upright and the "Virginian", when the "Virginian" struck her there would have been no crossing of the stems of the two vessels? A. No.

Q. The "Virginian's" stem would have struck the whole length of the "Strathalbyn's" stem? A. Probably, with the exception of the difference due to the differences in draught of the two vessels.

Q. You don't know, do you, the overhang of the stem of the "Virginian"? A. I do not know positively,

but it is not enough to attract your attention in looking at it ordinarily.

Q. Your idea is that it would have been possible for the "Virginian" to have approached the "Strathalbyn" from the port side of the "Strathalbyn" and for the "Virginian's" stem to have struck the plating on the port side of the "Strathalbyn" back of the aft side of the "Strathalbyn's" stem and inflicted the damage that has been testified to,—is it?

MR. BOGLE: I object to that. As I understand the question, it is exactly what the witness has not testified to.

THE WITNESS: I will ask to have the question read once more; it is a little bit confusing to me. (Last question repeated by the Reporter). A. I do not consider that it would have been possible for the "Virginian" to have inflicted the damage to the "Strathalbyn" that she sustained by striking her on the port side abaft the stem, as in my opinion, the lower part of the "Strathalbyn's" stem would have also been carried to starboard.

MR. HAYDEN: Q. What did you mean when you said to Mr. Bogle that the vessels might have approached each other from an angle less than right angles or an angle between a right angle and the line of the keel of the "Strathalbyn" projected directly ahead?

MR. BOGLE: I object to that as it does not state the witness's entire answer on that point. A. My answer was simply to illustrate the possibility of the "Virginian's" striking the plating of the "Strathalbyn" in the neighborhood of the after side of the stem.

MR. HAYDEN: Q. Coming at the "Strathalbyn" from what angle? A. Less than a right angle.

Q. How much less? A. Or a right angle.

Q. How much less? A. Possibly 45 degrees less.

Q. I want to ask you if the direct supervision of the work at the Union Iron Works, where you were employed, the direct supervision of ship-building as conducted in the Union Iron Works was not under the Master Shipbuilder, and not yourself? A. In the case of repairs it was directly under myself.

Q. In cases of construction how was it? A. In cases of construction it was under the General Manager

and Superintendent of the Ship-yard, but repair work came directly under my supervision, in many cases.

Q. You stated that the stem of the "Virginian" was bent back. Do you remember how far it was bent back?

A. Enough to be noted without taking measurements.

Q. Well, that does not give us a very good idea of it? A. Enough to attract attention.

Q. Does it show in that photograph? The photograph I am referring to is "F. A. G. 2"? A. Without any other knowledge of the case I would not be able to detect it in the photograph.

Q. Now, you say it was perceptible to the eye. Have you got a clear idea of it? Can you tell us how far it was bent back? A. To the best of my recollection it was bent back in the neighborhood of an inch, or an inch and a half; I don't recall just how much; I remember it was enough so that it would attract attention, and required straightening.

FURTHER RE-DIRECT EXAMINATION.

MR. BOGLE: Q. Mr. Gardner, Mr. Hayden asked you if the lighter loaded vessel or heavier loaded vessel would receive a greater shock at the collision; would not that also depend upon the weight and displacement of the relative vessels as well as the degree of loading?

A. The weight of the vessels would have to be taken into consideration, the weight and size of the vessels.

Q. Would not the answer to that question depend upon the weight of the vessel including cargo, the relative weight of both vessels including the cargo? A. Yes.

Q. Mr. Hayden also asked you if the yielding of material would not lessen the shock of the vessel on which the material was yielding. Is or is not it a fact that the yielding of material on one vessel would also lessen the shock on the vessel which is entering her? A. Lessen the shock on both vessels, in my opinion.

Q. After the "Virginian" had struck the after part of the stem of the "Strathalbyn" on the port side at any appreciable angle could it have caused the damage which was inflicted on the "Strathalbyn"? A. In my opinion it could not.

(Filed Dec. 24, 1913.)

WILLIAM H. SMITH, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) What is your full name?

A. William H. Smith.

Q. Where do you reside?

A. Portage, Washington.

Q. What is your business?

A. Master of steam vessels.

Q. How long have you been a master or held a master's license? A. Four or five years.

Q. And have you been during any of that time running on Puget Sound and adjacent waters?

A. I have.

Q. Were you an officer of the steamer "Daring" on January 12, 1912? A. I was.

Q. What officer were you? A. First officer.

Q. Were you on watch on the "Daring" on the evening of January 12th, 1912, in going into Tacoma?

A. I was.

Q. About what time were you due in Tacoma that evening? A. Well, I can't state that definitely.

Q. Well, about?

A. About 6:45 or in that neighborhood, I would judge.

Q. I understand you to say you were navigating the vessel going in? A. I was, yes sir.

Q. Where were you? A. In the wheel house.

Q. In going into the harbor that evening did you see any other vessel?

A. Only the one that crossed our bow.

Q. What first called your attention to that vessel?

A. Well, first I heard two whistles, and then the next was I discovered a dark object ahead, and about that time the captain stepped out from his room and asked why I didn't answer the two whistles, and I told him that—

MR. HAYDEN: (Interrupting) I object to any testimony as to that conversation between the captain and yourself, on the ground that it is hearsay.

Q. (Mr. Merritt)' You need not state the conversation.

Q. Did you answer the two whistles?

A. Eventually, yes sir.

Q. Did you at the time when you first heard them?

A. No sir.

Q. Why didn't you?

A. Because I didn't recognize where they came from.

Q. Could you see the vessel from which they came?

MR. HAYDEN: I object to that as leading.

Q. (Mr. Merritt) Answer the question.

A. Just state that again.

Q. I say, could you see the vessel that gave these whistles?

A. Well, I will have to say no, under the circumstances, without explaining.

Q. What was the first thing that you did see of the vessel, and whereabouts did you see her, if you saw her?

A. Well, she was pointed out and at about the same time it was apparent to me that the dark object was opening out lights, and I was convinced, then, that it was a vessel.

Q. Did you see any lights on her? A. I saw two.

Q. Where were they and what kind of lights?

A. They proved to be on the forward part of the vessel, white lights; and about the time I answered or eventually answered the two whistles, the one light—lower light disappeared, and I concluded it was a lantern over the side where they had been clearing their anchors or something of that kind.

Q. That was a white light, was it? A. White light.

MR. HAYDEN: I move to strike out the conclusion of this witness.

Q. (Mr. Merritt) I will ask you, from what you saw of this lower white light, what it appeared to you to have been, what kind of a light, where did it appear to you to have been?

A. It appeared to have been over the bow of the vessel.

Q. And what kind of a light?

A. White light, perhaps an oil light; that was a conclusion.

Q. Where was the other light that you speak of that you saw, with reference to the—

A. It was a higher light.

Q. And how did the two lights compare as to brilliancy? A. Both about the same.

Q. And I will ask you whether or not either of these lights were bright lights, or not?

A. No, they were not.

Q. Did you see any side lights of the vessel at that time? A. Not at that time, no.

Q. Did you afterwards see any side lights?

A. We did.

Q. What side light did you see?

A. A green light.

Q. And where were you with reference to the vessel when you first saw this green light?

A. Right abeam.

Q. Just go ahead and describe what you did with the "Daring" and what the other vessel did after you first heard these whistles?

A. Well, when I answered the two whistles I put my wheel astarboard, to run clear of the vessel that was ahead of me and apparently crossing my bow.

Q. When you put your wheel to starboard that threw your vessel to port, did it? A. Yes sir.

Q. And what was the action of the other vessel?

A. Well, she was swinging at the time—swinging up onto a course for Brown's Point.

Q. About how close did you get to her before you could see this green light?

A. Well, we saw the green light when it was dead abeam and possibly 500 feet—not to exceed 500 feet from her.

Q. What kind of a light was it as to being bright or otherwise? A. It was a very dim light.

Q. Could you tell in any way whether it had been obscured from you before you got up close to it, whether there was anything to obscure it, shut it out?

A. Well, merely a matter of conjecture concerning the deckload that she had on her.

MR. HAYDEN: I object now to this witness testifying as to his conjecture.

Q. (Mr. Merritt) Could you see the outlines of this vessel as you got closer to her? A. Yes sir.

Q. What kind of a vessel was it?

A. She was an ocean-going steamer.

Q. Large or small? A. Very large steamer.

Q. Could you see whether or not she carried any deckload? A. Yes sir.

Q. Did she? A. She did have.

Q. Did you meet any other large ocean-going steamer, going into the harbor that night?

A. No sir.

Q. Was there anything at that time that attracted your attention to these lights and to the character of the lights that you saw on the vessel? A. Yes sir.

Q. What?

A. First, that they were very dim, and the green light didn't show up until we were right abeam; since the vessel having crossed our bow and swung up into a position parallel with us, it was something to be noticed.

Q. What kind of a night was it? A. Clear night.

Q. As I understand you say she was crossing your bow how, from port to starboard or starboard to port?

A. Well, from starboard to port—she was showing her starboard side to us.

Q. Showing her starboard side to you? A. Yes sir.

Q. Then she would be crossing from the left to the right of your vessel?

MR. HAYDEN: I object to your telling him how she was crossing. I move to strike the question.

A. She was crossing our bow with her starboard side to us.

Q. (Mr. Merritt) How would she be going, from left to right or right to left of your vessel then? I say, would she be going, from the right to left or from left to right of your vessel?

A. She would be going to left.

Q. Do you mean going to the left or from the left?

A. What do you call—

Q. (Interrupting) From port to starboard or starboard to port, which?

A. She was passing to our starboard.

Q. To your starboard?

A. On our starboard side, yes sir.

Q. Did you see any range light? A. No sir.

Q. Did you ever see the red light? A. No sir.

Q. Could you tell whether these lights were electric or oil lights, that you saw? A. No, I could not tell.

CROSS EXAMINATION.

Q. (Mr. Hayden) Where was the "Daring" coming from on this night?

A. From Brown's Point into Tacoma, on the run between Seattle and Tacoma; she was on the mail run.

Q. And you saw this vessel after you got beyond Brown's Point? A. Yes sir.

Q. How far beyond Brown's Point?

A. I should judge we were about in the middle of the harbor.

Q. About in the middle of the harbor. Where was this vessel, then, when you first saw her?

A. She was just about across the entrance of the City Waterway when I first saw her.

Q. Just about across the entrance of the City Waterway? A. Yes sir.

Q. How far from the entrance of the City Waterway?

A. Well, I would have to guess at that; I would say less than a half a mile.

Q. Less than a half a mile. And you saw her when you came around Brown's Point?

A. No, that was the course we were on.

Q. From Brown's Point, and you saw the—

A. (Interrupting) We were about half way in the harbor.

Q. You were half way between the entrance of the City Waterway and Brown's Point, then; is that what you mean? A. Yes sir.

Q. And this vessel that you saw, when you first saw her, was about a half a mile from the entrance of the Waterway? A. Yes.

Q. How long after you saw the vessel was it before you heard her whistles?

A. Well, I heard her whistles before I saw the vessel.

Q. Oh. The vessel then must have proceeded some distance from the entrance of the City Waterway towards your position in the harbor before she blew her whistles or before you saw her after she blew her whistles? A. Yes sir.

Q. You didn't see any masthead light on this vessel, did you?

A. Well, what eventually assumed to be a masthead light, yes sir.

Q. Shown in what way?

A. After the vessel had swung around into position so that we would see the fore and aft light, as it were, then we knew of course that it was the masthead light.

Q. Then as a matter of fact you did see a masthead light on this vessel? A. Yes sir.

Q. You say that masthead light was very dim?

A. Yes sir.

Q. Have you any idea how far it could be seen?

A. No.

Q. You haven't any idea. Now, you say that you saw two white lights; one of those you think was a lantern and the other was the masthead light?

A. Yes sir.

Q. There was one lantern that was hanging over the bow, and the masthead light that you saw on this vessel?

A. I said that the lantern, that was the conclusion that I came to.

Q. Was hanging over the bow?

A. Was over the bow, yes sir, or the light we saw was a lantern that perhaps had been used for taking in the anchors.

Q. You didn't see a red light at all? A. No sir.

Q. Consequently you don't have any idea whether the red light could have been seen or not?

A. No sir.

Q. That side of the vessel was not toward you—

A. (Interrupting) No sir.

Q. (Continuing) —so that you could have seen it?

A. No sir.

Q. The green light you say you could not see over 500 feet? A. Well, I didn't state that way.

Q. You didn't mean it to be so understood, then?

A. I said we were in the neighborhood of perhaps 500 feet apart when the green light showed up.

Q. When you saw the green light, you mean?

A. Yes sir.

Q. Not when it showed up, but when you saw it. You were busy talking with the captain of the "Daring" and paying attention to your whistles and doing other things, weren't you, aboard the vessel?

Q. But that was afterwards, the conversation the captain and I had.

Q. Was after this—

A. (Interrupting) After we had blown our whistles.

Q. That was after you had seen the green light?

A. No sir.

Q. It was before you had seen the green light?

A. Yes.

Q. Your conversation with the captain of the "Daring" was before you had seen the green light?

A. The conversation began before I saw the green light, yes sir.

Q. So you were busy blowing your whistle and talking with the captain before you saw the green light?

A. Yes sir.

Q. And the first time that you did see it was when you were directly abreast of the "Strathalbyn"?

A. Directly abreast, yes sir.

Q. Was that off the "Strathalbyn's" beam or off your beam? A. Off both our beams.

Q. So the boats were both parallel with each other?

A. Yes sir.

Q. And abeam of each other? A. Yes sir.

Q. Do you mean to say that you could not have seen that light from a point ahead of that position?

A. We didn't see it.

Q. Do you mean to say that you could not have seen it from a point ahead of that position?

A. I could not say that. It did not show up.

Q. As a matter of fact you did not see it from a point ahead of it? A. We did not.

Q. You said this green light was very dim, I believe? A. Yes sir.

Q. You used the word "very"? A. "Very."

Q. How far would you say you could see the green light?

A. Well, I have not thought about comparing distances.

Q. You don't know, then, how far you could have seen the green light? A. No sir.

Q. How old are you? A. Twenty-five.

Q. And where have you been going to sea?

A. On Puget Sound, and Alaska.

Q. On steamboats on those runs?

A. Steamboats, yes sir.

Q. On the inside run to Alaska, principally.

A. And the Bering Sea.

Q. Ever been before the mast as a sailor on a ship?

A. I have.

Q. On sailing ships? A. No sir.

Q. On steamers? A. Steamers.

Q. And when did you start to go to sea? A. 1895.

Q. You say you saw this steamer before you saw her lights; is that right? A. Yes sir.

Q. What kind of a hull was this steamer—what was the color of it? A. Well, I said a dark object.

Q. A dark object? A. Yes sir, dark.

Q. You could see this dark object even before you could see these white lights?

A. Well, they were both determined about the same time.

Q. You made out the object before you made out the lights, I believe you said. A. Yes sir.

Q. This was at night time you saw this?

A. Night time.

Q. And you mean to say to the court that you could see that object further than—that black object further than you could see those lights, do you? A. Yes sir.

Q. All right. Why could you see a black object further than you could see lights?

A. Covered the lights of the city.

Q. Oh, she covered the lights of the city?

A. Yes sir.

Q. So the other lights were not covering the lights of the city, is that it—the lights on the “Strathalbyn” were not covering the lights of the city?

A. The white lights were not.

Q. The white lights were not?

A. They were intermingled.

Q. Oh, intermingled with the lights of the city?

A. Yes sir.

Q. Therefore the white lights might have been perfectly visible for a long distance and you not see them because they were intermingled with the lights of the city; is that right?

A. They might have been would the position not have been changed.

Q. But the position was changing all the time?

A. Yes sir.

Q. Then why didn't you see the white lights, with its changing position as against the city lights, as well as to have seen the dark hull as against the city lights?

A. Well, the dark hull covered the city lights, while the white lights would intermingle with the city lights.

Q. But the white lights you say were moving; the city lights were not moving—white lights were not moving, were they?

A. You don't understand. I said the motion of the vessel showed when she began opening out the lights, showed there was a motion, and in that way I could discern the vessel itself.

Q. I see. But you say you could not discern the motion of the lights on the “Strathalbyn”? A. No sir.

Q. The “Strathalbyn's” lights were moving with the “Strathalbyn,” weren't they?

A. Yes sir.

Q. And they were moving against the lights of the city— A. Yes sir.

Q. —just the same as the body of the “Strathalbyn” was moving against the lights of the city, if you had noticed them? A. Yes sir.

Q. As a matter of fact you did not happen to notice them; is that it?

A. Well, I noticed them, but they were—

Q. (Interrupting) I mean you did not happen to notice them as soon as you noticed the "Strathalbyn"?

A. No, no, I could not tell.

Q. (Interrupting) You would not say you could not see them further than you could see the hull of the "Strathalbyn," would you?

A. Yes sir. I could not see the lights further than I could see the hull of the "Strathalbyn," because of the fact that by changing your position in the harbor, no matter what position one might be in, there is always—the city lights, one would disappear and another one come in, another disappear and another come in, and so on and so forth, and in that way; I consequently would not have noticed and did not notice her white lights at the time that I could see the hull.

Q. Well, now, what I want to get at is,—you did not notice them—I appreciate that point, but you don't mean to say that if you had noticed them that you could not have seen them before you saw the—

A. (Interrupting) Yes sir, I could have seen them.

Q. You could have seen them, had you noticed them, further than you could have seen the dark hull of the ship, couldn't you?

A. I believe I could, in the position we were in.

Q. The lights were not so dim that you could not see them— A. (Interrupting) Oh, no.

Q. (Continuing) —any considerable distance?

A. They were burning.

Q. They were burning so that they could have been seen quite a distance too, weren't they, if you saw them; you realized that fact, didn't you?

A. Well, no, I realized that they were a very dim light.

Q. I didn't ask you whether they were very dim or not; that is a matter of comparison. A. Yes sir.

Q. I am asking how far you could have seen them?

A. Well, I would only have to guess at that; I don't know.

Q. Yes; you don't know. A. No.

Q. Have you ever had any experience with lights that burn oil, that is, that you know are burning oil, as compared with lights that you know are burning electricity? A. Yes sir.

Q. Looking at those lights at a distance, that is what I am asking you? A. Yes sir.

Q. What steamers on the Sound are burning oil in their side lights or masthead lights?

A. Well, I could not tell you right now. There is one, for instance the "A. W. Sterrett," she has now electric lights, but there was a long time she had oil lights on her.

Q. You knew she had oil lights? A. Yes sir.

Q. And you were accustomed to see those oil lights?

A. Yes sir.

Q. Now, any other steamers that you are accustomed to seeing oil lights on, that you knew were burning oil lights?

A. There were quite a number of little tow boats that did, and some had—

Q. (Interrupting) Some little launches with very small lights also burn oil in their lights, or do they all burn electricity?

A. No, there is quite a number of them I know burn oil.

Q. You know, as a matter of fact, that there is a big difference in the appearance of an oil light from an electric light, do you not? A. Yes sir.

Q. Side light. The electric lights are very much brighter lights? A. Yes sir.

Q. Don't you know that an oil light will show through a fog further than an electric light will show?

A. No, I don't know it.

Q. Don't you know there is sort of a halo around an electric light that there is not around an oil light?

A. Yes sir.

Q. That is true, is it not?

A. Yes sir. That is getting into science, with me.

Q. I am not talking about science, I am talking about what you have seen.

A. That is just a comment, is all.

Q. I am just talking about what you have seen?

A. Yes.

Q. You say you blew two whistles?

A. Two whistles.

Q. Before you saw the lights on the steamer?

A. Before I saw her side light, yes sir.

Q. And why did you do that? A. Orders.

Q. From whom? A. Captain.

Q. And why did he give you such orders?

A. Why, he no doubt had picked out the vessel before I had.

Q. Picked out the side light before you had?

A. No, I could not see the light, not the side light.

Q. You don't think he picked out a side light before you did?

A. No, we both saw the light at the same time.

Q. Now then if he saw the vessel, you think that is the reason that he gave the two whistles?

A. Yes sir.

Q. Or ordered you to give the two whistles?

A. Yes sir.

Q. Don't you think it was because you received two whistles from the other vessel?

A. Well, that is in response to the two whistles, he heard them blown and—

Q. (Interrupting) When you receive a whistle—

MR. MERRITT: (Interrupting) Let him answer. Go ahead with your answer.

Q. Mr. Hayden) You heard them blown?

A. Yes sir.

Q. And in response to them you blew two whistles; that is what you mean to say?

A. Ultimately, yes sir.

Q. When you blew your two whistles, which way did you put your helm?

A. Put my helm down to starboard.

Q. Down to starboard?

A. Yes sir. The wheel of course went port, but the helm itself went starboard.

Q. And that threw the bow of your vessel which way. A. Away from the object approaching.

Q. Away from the object approaching? A. Yes.

Q. Threw it to port? A. To port.

Q. Now, that is what you always do, isn't it, when you blow your whistle, the rule is to port your helm?

A. Yes sir.

Q. And so when you hear a whistle from another vessel and you want to pass her, if they whistle the two whistles you blow two whistles and port your helm; that is right, isn't it? A. Yes sir, that is correct.

Q. So probably it was in response to the two whistles that you had heard from the "Strathalbyn" that you blew your two whistles and ported your helm, wasn't it? A. Yes sir.

Q. And that was before you saw the "Strathalbyn"—I don't say "Strathalbyn"—this vessel that you are talking about. A. Yes sir.

Q. That is before you saw her that you gave the two whistles in answer to the whistles from this vessel?

A. Well, that I might say would be simultaneous; about the time I blew the whistles then I picked the—

Q. (Interrupting) Are you positive that you saw this vessel at the time you blew these two whistles or after the time you blew these two whistles?

A. Well, I am positive, of course, that I saw the vessel, as far as that is concerned, before I blew the two whistles, but I did not answer the two whistles that she blew, because I didn't know in the first instance where the two whistles came from nor what would be the object in blowing two whistles to me. As a matter of conjecture of course in my mind at the time I didn't know.

Q. Don't you know what the object of blowing two whistles is to an approaching boat?

A. If you know you are the vessel, but it could have been or it would not have been an impossibility for to have been blowing to some other vessel.

Q. In the harbor there? A. Yes.

Q. You could not tell just where this sound came from in the harbor? A. No.

Q. Whether it was ahead of you or one side of you or the other. A. No sir.

Q. Now—

A. (Interrupting) Well, say, I will have to retract that statement. I knew that the sound was ahead.

Q. Then you knew it was from a vessel ahead?

A. Yes sir.

Q. Was there any other vessel between you and where this sound came from? A. No sir.

Q. Did you have your windows down in the wheel house? A. Yes sir.

Q. Which side were you standing on?

A. At the starboard side.

Q. That would be the side nearest the boat that you were approaching? A. It was, yes sir.

Q. You had no trouble, did you, when you once saw this white light, telling it was a masthead light on the vessel that you met?

A. Well, I don't know just how to answer that.

Q. Wasn't it in the regular position of a masthead light? A. I would answer yes to that question.

Q. So when you saw this masthead light you knew it was a masthead light, did you not?

A. Well, I say that was the conjecture.

Q. Well, if it was in the position of a masthead light, you must have known it was the masthead light?

A. You see providing the masthead light was out and she had a range light burning, that would just as well have been a range light.

Q. Providing it was out, but I am not providing it was out.

A. Well, if she only had the one light.

Q. You could tell it was up in the mast without any trouble at all?

A. Oh, yes, in the mast.

Q. You could tell it was in the mast without the slightest trouble?

A. I could tell it was in the fore part of the vessel after it swung around and in a parallel position with us.

Q. And the reason you say you don't know whether she had a—whether it was the masthead light is because you think it might have been a range light?

A. It would not have been an impossibility.

Q. It would not have been an impossibility?

A. No.

Q. But there was no difficulty in telling that it was a light up in the mast, at any time, was there? A. No.

Q. Now, did you notice this light flaring up and going out? A. No.

Q. It was a steady light burning at the time you saw it, was it? A. Yes sir.

Q. Was the side light steady as long as you saw it?

A. Yes sir.

Q. How far above the water is the deck of the wheel house of the "Daring"?

A. Well, it is perhaps 18 feet.

Q. 18 feet. So your height above the water would have been 18 feet plus the height of your body?

A. It may have been it is 15 or 18 feet, in that vicinity.

Q. How tall a man are you?

A. Five and a half—five six and a half.

Q. How? A. Five six and a half.

Q. I was talking about the deck of the wheel house, the distance from the deck of the wheel house to the water, on the "Daring", and you understood me—

A. (Interrupting) You mean the floor of the wheel house?

Q. Yes.

A. Well, I would say perhaps 12 or 14 feet.

Q. 12 or 14 feet? A. Would be the floor.

Q. Now then, what is there above the floor of the wheel house, anything to elevate it, a man standing there, does a man stand right on the floor of the wheel house?

A. Stands right on the floor of the wheel house.

Q. And you were leaning out of the window, were you, or standing inside of the wheel house when you were looking? A. Inside.

Q. And were you standing upright or leaning out of the window—

A. (Interrupting) I was standing upright.

Q. When you were looking for this vessel?

A. Upright.

Q. You say you passed this vessel about 500 feet off? A. Approximately, yes sir.

Q. I believe you said this vessel was crossing your bow. How do you know that to be a fact, if you could not tell which way she was going—heading, until you got opposite her?

A. Well, I said that the lights—the changing position of this dark object in reference to the city lights, in that way I could discern that it was a moving object and it was crossing our bows.

Q. In other words, if this vessel was leaving about opposite the entrance of the City Waterway and was going around Brown's Point, being a large steamer she would take a wider course to go around Brown's Point, that is, she would give more room to Brown's Point than you would take being in a small boat like the "Daring"?

A. Yes sir.

Q. And you were coming in to the Municipal Dock? A. No, we landed at the N. P. Dock.

Q. In coming in to the N. P. Dock, as you came closer around Brown's Point you would be sort of cutting across the course that would naturally be taken by this bigger steamer; that is about the situation, isn't it? A. Yes sir.

Q. So that under those circumstances the only possible position would be that this steamer and you were practically head-on, if you were coming toward this steamer with this steamer's right hand side toward you; that is the only situation that you can figure out under the— A. (Interrupting) Yes.

Q. (Continuing) —movements that were being carried out by these two ships. Now, in looking at these lights on the ship that you met, are you able to say now whether they were electric lights or oil lights, from your experience in connection with the—

A. I believe they were oil lights.

Q. You believe they were oil lights?

A. Yes sir.

Q. Because they burned more like oil lights, did they?? A. Yes sir.

Q. They had more the appearance of oil lights burning?

A. Yes sir, that is the fact that I mentioned a few minutes afterwards.

Q. The fact you mentioned a few minutes afterwards was that they appeared to be oil lights?

A. Yes sir.

Q. Is that what you mentioned a few minutes afterwards? A. Yes sir.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) You were asked why you blew these two whistles, and you answered that you did it under orders from the captain. A. Yes sir.

Q. Did the captain state to you at that time any reason why he ordered you to blow these two whistles?

MR. HAYDEN: I object to that as immaterial and hearsay.

Q. (Mr. Merritt) Answer the question. Did he give you any reason? You were asked why you blew it and why the captain ordered you to blow these two whistles. A. Yes sir.

Q. Did he give you any reason why he told you to blow the whistles. A. He did.

Q. What was it?

A. Well, he could see the vessel and the position she was in and he could see that I was not going to blow a whistle until I saw a signal light.

Q. By a signal light you mean what?

A. The green light, which I demanded to know at the time, I demanded to know where his light was at the time. I didn't know what to blow at. That is the remark that was made.

Q. And could you see the green light at that time?

A. No sir.

Q. Could you see it until after you had blown these two whistles? A. No sir, it was after I—

Q. (Interrupting) I say until afterwards?

A. Until afterwards.

Q. Were you looking for it? A. Yes sir.

Q. Did you continue to look for it until you saw it?

A. Yes sir.

Q. Did you see it in watching this object before you had got to this position of not over 500 feet, as you say? A. No sir, got right abeam.

Q. Now, you gave some testimony as to the possible distance you might have seen these two white lights. Could you have seen, in your opinion, the higher light any further than you could have seen the lower light?

MR. HAYDEN: I object to that as cross examining his own witness. He said he could not tell how far he could see it, he never figured it out.

MR. MERRITT: I am asking him to compare the two lights.

Q. (Mr. Merritt) Answer the question, whether you could have seen, in your opinion, the higher light any further than you could have seen the lower light of the two white lights?

MR. HAYDEN: I object to the question on the ground that he says he does not know how far he could have seen either of them.

Q. (Mr. Merritt) Answer the question.

A. Well, you will have to read that question, please.

(Question read.)

A. Well, I will have to say yes, because the white light is supposed to show further than the green light or than your colored lights are.

Q. Well, I am not talking about comparing the white with the green, I am talking about and asking you to compare the two white lights, the light that you say or think was the lantern hanging over the bow and the light you thought possibly was the masthead light; could you see what you thought was the masthead light any further than you could see what you thought was a lantern? A. No sir.

Q. You say you were watching for these side lights all the time? A. I was.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Was this lantern a very dim lantern too? A. Yes sir.

Q. That was a very dim lantern too?

A. Dim light, yes sir.

Q. It was not the ordinary brilliancy of an ordinary lantern, was it, in your opinion? A. No sir.

Q. No, it was a dim lantern; that is the one you think was hanging over the bow?

A. There were two lights—

Q. (Interrupting) I am talking about a dim lantern. You think it was a dim lantern, do you, more dim than the ordinary lanterns are?

A. Well, no, because oftentimes with an electric

plant aboard a vessel one can have—in that instance they could have had an electric light over the bow of the vessel; but so far as my knowing the facts only in my own mind and making a comparison—

Q. (Interrupting) If this was an oil lantern, was it dimmer than the ordinary oil lantern?

A. Well, it was—

Q. (Interrupting) It was an ordinary bright oil light, was it?

A. Yes sir, it was an ordinary light, apparently an oil light, yes sir.

Q. Apparently an oil light and ordinarily bright for an oil light, was it? A. Well—

Q. The lantern, in your opinion, now?

A. In my opinion it was a dim light.

A. I am not talking about it compared with an electric light. A. No.

Q. I am talking about it compared with an ordinary oil light. A. Yes.

Q. It was of the ordinary brilliancy of an ordinary oil light? A. I assume that, yes sir.

Q. Well, I want your opinion about it, you know, I want to know whether you think that was—

A. (Interrupting) It would be a matter of conjecture.

Q. Well, it looked like it? A. Yes sir.

Q. The best conjecture you can give us then about it is that it was an ordinary oil light?

A. Ordinary—

Q. (Interrupting) Burning with ordinary brilliancy? A. With ordinary brilliancy, yes sir.

Q. Now, the lights that are usual on the shore and around in these houses are ordinary oil lights too, are they not, lamps that they use in these farm houses?

A. Oh, yes.

Q. Are ordinary oil lamps, are they not? A. Yes.

Q. And yet you see them a good many miles off, don't you? A. Yes sir.

Q. And I presume if you had had this lantern upon the side of a hill somewhere you could have seen it a good many miles off too, couldn't you? A. Possibly.

Q. And the same with the masthead light too, couldn't you? A. Possibly.

Q. You say you were not going to blow until you saw the green light of the vessel that was going out?

A. Yes sir.

Q. That was your intention? A. Yes sir.

Q. Not to blow until you saw the green light?

A. Until I saw the signal light.

Q. You did not intend to shift your helm, either, until you saw the green light, did you?

A. Well, I could not answer that question.

Q. Did you shift your helm before you saw the green light?

A. No, I did not, I held her on her course.

Q. Held her right there? A. Yes sir.

Q. Notwithstanding you had heard the whistles blown to you? A. Yes sir.

Q. And notwithstanding that you had seen the black object ahead of you? A. Yes sir.

Q. Approaching you? A. Yes sir.

Q. You held her right on your course too?

A. Yes sir.

Q. So that, knowing you were approaching a black object, you were going to run right into it; is that the idea? A. No.

Q. Unless you saw her green light?

A. No, I won't state that.

Q. Well, what do you state, as a navigating proposition, then, under those circumstances?

A. When it came to a point of where I considered I was in any danger, why, I should have stopped my vessel.

Q. Oh, you would have stopped your vessel.

A. Yes sir.

Q. How do you suppose the fellow on the other vessel was going to know what you were going to do under those circumstances?

MR. MERRITT: I object to this as incompetent, irrelevant and immaterial and not proper cross examination.

Q. (Mr. Hayden) As a navigator, I am asking you.

A. If we would approach to a point where I considered it unsafe and he would not have blowed any danger signals or any other signals, why, there would not have been any necessity of my letting him know what I was doing. Would he have blown danger signals and I would be in a position where I considered it was unsafe and I stopped my vessel, I should signify that by blowing three whistles so that he would know that I had my engine reversed full speed astern.

Q. So that you would have your vessel in a position of danger so that it would be necessary for the other fellow to blow danger signals to tell you you were in a position of danger? A. Not essentially that.

MR. MERRITT: I object to that—

Q. Is that what you said? A. No, I didn't.

MR. MERRITT: (Continuing) —as incompetent, irrelevant and immaterial and not proper cross examination.

Q. (Mr. Hayden) What did you mean? You said you would get into a position where he would have to blow danger signals to you before you would blow several whistles?

A. Would that time come when he would begin to blow whistles—or if I considered that it was getting unsafe for the vessel that I was in, by stopping her and backing her up, it would not be necessary for me to signify him as long as he did not consider he was in danger. If he would not consider he was in any danger, or, rather, that I was by approaching him, why, he would not be called upon to blow any whistles, would he?

Q. Wouldn't it be a very much safer proposition, as a navigating proposition, when you see a vessel approaching you, to blow two whistles, and especially when you saw her coming at you and she had blown two whistles, to put your helm over and give them plenty of room to go by?

A. You have lost position with the vessel when you make that statement. When he blew the two whistles, he was dead across our bows.

Q. You knew the way he was going, didn't you?

A. Well, no.

Q. You must have known he was going off, to swing off—

A. (Interrupting) That was demonstrated to me.

Q. What did it mean to your mind, that is what I am getting at?

A. Well, I could not tell that he was blowing the two whistles to me, because I didn't see any signal lights, consequently I would not know but what he would be blowing to—a vessel might have been approaching him from the other side, coming out from—

Q. (Interrupting) I suppose you took an opportunity to look around and see if that was the case, didn't you? A. I did, yes.

Q. You didn't see any other vessel, did you?

A. It may have been something on the other side of him. By him blowing two whistles, I could not tell from the position that he was in and the position we were in that he was blowing two whistles at me; and the captain came to the conclusion then—

Q. (Interrupting) When you saw—

MR. MERRITT: (Interrupting) Let him answer that question.

Q. (Mr. Hayden) When you saw—

MR. MERRITT: (Interrupting) I object and ask that the witness continue his answer.

MR. HAYDEN: I thought he had finished.

MR. MERRITT: Go ahead with your answer.

MR. HAYDEN: I object to what the captain said to you, you know; that is all hearsay.

MR. MERRITT: Go ahead.

MR. HAYDEN: I wish to put in that objection.

MR. MERRITT: Put in your objection and let the witness answer.

MR. HAYDEN: Go ahead.

A. Well, I said that I could not tell, the position that he was in, that he was blowing two whistles at me.

Q. (Mr. Hayden) All right. Then isn't it your duty, when you see a vessel approaching you so that she is nearly head-on to you, under the rules, to give her a signal? A. True enough.

Q. Why didn't you give her a signal?

A. But when she blew the two whistles she was

across our bow, we were not head-on. She ultimately changed our position so that we were head-on, but at that time I had answered them and had put my wheel astarboard—my helm astarboard and run clear. And so far as the dark object is concerned, I perhaps will be able to satisfy the question in your mind anyway: Ofttimes running on the Sound we have very dark shadows cast across the waters, and so much so when approaching the cities, there are very deep shadows, and ofttimes if there would not be a light, for instance on a scow, you could not tell a loaded scow—a scowload of gravel, for instance, crossing the harbor here or in Tacoma Harbor, if you don't have a light on it, and you don't deem yourself in danger because there is a dark object ahead of you.

Q. When you are navigating and there is a vessel that is at anchor, she does not have any side lights, does she? A. No sir.

Q. So that under those circumstances if you see that dark object ahead of you, you change your course, don't you, to miss it, if you are running at it, you change your course to miss it?

A. I would not know what to do if she would blow whistles if she was laying at anchor.

Q. You say you knew these whistles were ahead.

A. True enough.

Q. You would change your course to miss her?

A. Yes, when I got to a point where I thought it was necessary.

Q. So that under those circumstances you really would have changed your course if you had got to a point where you thought it was necessary, wouldn't you?

A. Yes sir.

Q. You would not have gone straight on your course— A. (Interrupting) Oh, no.

Q. (Continuing) —until both boats got in danger and commenced to think of blowing danger signals?

(No response.)

Q. You say "No," to that, don't you?

A. No, I would say no to that.

Q. So, as a matter of fact, until after you had blown your two whistles you didn't think you were in any

danger of a collision with this vessel on this night?

A. No sir.

(Witness excused.)

GEORGE N. SALISBURY, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) You reside at Seattle, Washington? A. At Seattle, yes sir.

Q. And what is your position?

A. I am the official in charge of the local Weather Bureau Office.

Q. (Mr. Hayden) What?

A. In charge of the local Weather Bureau Office.

Q. (Mr. Merritt) And have been how long?

A. Why, I have been in charge here for nineteen years.

Q. You were in charge on December 12th, 1912?

A. Yes, I was.

Q. Have you the official records of the Weather Bureau Office at Seattle for that date?

A. Yes, I have the original records and observations.

Q. Will you refer to those records and tell what the direction of the wind was between six and seven o'clock p. m. on January 12th, 1912?

A. On January 12th, 1912, the record shows between five and six the wind was blowing from the southwest with a velocity of twenty-three miles per hour.

Q. And between six and seven what was it?

A. And between six and seven was blowing from the south with a mean velocity of twenty-six miles an hour.

Q. And what between seven and eight on the same date?

A. Between seven and eight, from the southwest, with a mean velocity of twenty-seven miles an hour, reaching a maximum of thirty-one in the southwest at 7:26 p. m.

Q. Take the maximum velocity recorded during

this period of from six to eight o'clock, based on five minute periods, what was the average rate?

A. It would be that one that I last read, the maximum velocity in those three hours would be thirty-one miles from the southwest, at 7:26. p. m.

CROSS EXAMINATION.

Q. (Mr. Hayden) I presume that the report of the velocity of the wind here is not an absolute criterion as to what the velocity of the wind might have been at any particular time between Robinsons Point and Dash Point?

MR. MERRITT: I object to the question as incompetent, irrelevant and immaterial and not proper cross examination.

MR. HAYDEN: I wish to object to all this testimony as irrelevant and immaterial, and move to strike out what the wind was at Seattle; and under that objection and subject to that objection and without waiving it, I am simply asking these questions of Mr. Salisbury.

A. No, I would not regard this as being an absolute indication that the wind was just the same on the Sound at that point as it is here at Seattle—not just the same in velocity or direction.

Q. Did the wind increase in Seattle after eight o'clock, or decrease?

A. There was a slight increase; between eight and nine it reached thirty-two miles an hour; between nine and ten, thirty-three miles.

Q. Now, Mr. Salisbury, will you tell me what the minimum velocity of the wind was between five and six?

A. Between five and six. No, I could not tell what the minimum velocity was. There is no record as to that. The average velocity for the hour, twenty-four miles—twenty-three miles, between five and six.

Q. You have no means of telling the minimum?

A. I have no means of telling what the minimum was, not—

Q. (Interrupting) Have you any means of telling how long the velocities that you have figured as averaging continued?

A. Those average velocities, that continued throughout the hour or through those three hours as

I have read them. That was the number of miles that the wind progressed during that time.

Q. But I mean can you tell whether there was a comparative minimum for say twenty minutes, and an intermediate for twenty minutes and a maximum for twenty minutes during that hour?

A. Well, I would say that the minimum was not very far below the average. I would say that it was not much further below the average, probably, than the maximum winds of thirty-one or thirty-two miles I have read were above the average.

Q. What would be the variation above and below the average, can you tell that.

A. Well, above the average four to seven miles, why, it would be below the average probably not very much more, or else we would not have those records as to the average. The one here from seven to eight, the wind is four miles above the average at the extreme, and the other maximum, between eight and nine, is seven miles above the average.

Q. No, for what length of time do you figure that four miles above the average? A. For the total hour.

Q. What proportion of the total hour?

A. Oh, the time that is above is just for a period of five minutes during which the wind continued at that velocity or those velocities of thirty-one and thirty-two miles, respectfully, in those two hours—five minute periods.

Q. Only five minutes, then, during the whole sixty minutes, when it was four miles above the average; is that it? A. Yes.

Q. Then how many minutes was it say three miles above the average? A. Well, that I could not state.

Q. You have no method of finding the minimum or anything—

A. Yes, there is a method of finding it. The minimum wind is recorded on the original sheets where the automatic record was made; that is at the central office in Washington, it is not preserved at this station. This is the record that is preserved at the station, called the Daily Local Record.

Q. Your instrument here is situated pretty high above the land, is it not, it is on top of the—

A. (Interrupting) Yes, at that time it was in the same location that it is now, on top of the Hoge Building and at an elevation of 250 feet above the ground.

Q. And the velocity of the wind there would probably be more, would it not, than it would down toward the surface of the water, 40 or 50 or 60 feet above the surface of the water?

A. I would not regard it that way; I should regard it as being more than it is at the surface of the ground underneath, or over the level of the city here, but not much, as my experience and observation would show, above the open wind on the Sound.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) I don't know whether you gave the maximum velocity between six and seven and seven and eight. Did you give that?

A. Between seven and eight the maximum velocity was thirty-one miles, southwest.

Q. And how much was that above the—

A. (Interrupting) That was the one that was four miles.

Q. That was the one that was four? A. Yes.

Q. And now, as I understand you to say, in your opinion it would not fall more than four miles below the average during that time?

A. Hardly more than that, or they could not get that average very well.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Of course the average would depend on the length of time, would it not— A. Yes.

Q. (Continuing) —that the minimum prevailed—

A. Yes.

Q. (Continuing) —and the length of time that the maximum prevailed?

A. Yes; and the argument is the more strong because this maximum prevailed but for five minutes, showing that there was not a very great time that it was above this average.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) You mean that would be more

strong that it did not fall below four miles below the average?

A. That is the way it appears to me. I may be a little confused on it, but that is the way it appears to me. If at any time it had gone very far below average, that tends to bring up the average for the whole hour; the greater the velocity for five minutes the greater the average for the full hour; if that was not very far above the velocity, and only for the short time that it was so much above the average, then it would stand to reason that there could be no very long period when it was far below the average.

(Witness excused.)

R. E. CAPERS, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) Your name is R. E. Capers?

A. Yes sir.

Q. You are a practicing attorney in Seattle?

A. Yes sir.

Q. (Mr. Hayden) And associated with the firm of Bogle, Graves, Merritt & Bogle?

A. Yes sir, I am connected with the attorneys for the respondent and claimant.

Q. (Mr. Merritt) And were on December 4th of this year? A. Yes sir.

Q. Do you know the steamer "Strathalbyn"?

A. Yes sir.

Q. Were you on her on December 4th, 1913?

A. Yes sir.

Q. Whereabouts? A. Did you say whereabouts?

Q. Yes.

A. I was on the fore part of the vessel on December 4th, on the lower bridge, and different parts of the vessel, all over the fore part of the upper deck.

Q. Where was the vessel at that time?

A. She was loading lumber at Port Blakely.

Q. That is on Puget Sound opposite Seattle?

A. On Puget Sound, across the Bay from Seattle.

Q. Did you at that time have any photographs taken of any part of the vessel?

A. Yes sir, photographer Nowell and I went over and took photographs of certain portions of the vessel and from certain portions of the vessel.

Q. Showing you seven photographs, marked by the stenographer, respectively, Capers' exhibit "A", Capers' exhibit "B", Capers' exhibit "C", Capers' exhibit "D", Capers' exhibit "E", Capers' exhibit "F" and Capers' exhibit "G", I will ask you if those are the photographs which you had taken of the "Strathalbyn" or portions of the "Strathalbyn" at the time and place you have mentioned? A. Yes sir, they are.

Q. Now, refer to exhibit marked by the stenographer Capers' exhibit "A" and state fully where the camera by which this photograph was taken was placed in taking this photograph?

MR. HAYDEN: I want to just ask the witness a question or two.

Q. (Mr. Hayden) Did you develop these photographs?

A. I did not personally. I was present when the developing was in progress, however.

Q. (Mr. Hayden) During the whole of the development? A. No sir.

Q. (Mr. Hayden) Only a part of it. Were you present when the photographs were printed?

A. No sir.

MR. HAYDEN: I think the best witness in connection with these photographs would be the witness who developed these, did the development work, and who made the printing of them—unless it is merely illustrative of something.

THE WITNESS: I will make a statement in reference to that—

Q. (Mr. Merritt, interrupting) I will ask you whether or not these are correct photographs of portions of the "Strathalbyn" at the time and place you have mentioned?

MR. HAYDEN: I object to that as the witness is unable to state that they are correct.

Q. (Mr. Merritt) Proceed.

A. They are exact photographs.

Q. Did you see the plates afterwards?

A. Yes sir, I saw the plates down in the photographer's office.

Q. Do you know whether these are prints from the plates that were taken at that time?

A. They are absolute reproductions of the plates. Furthermore, I will make this statement in reference to the identification of the photographs, that as fast as the photographs were taken, I had them marked on the back by the photographer, in a given order, and identified them in that way; the same number appeared on the back of the photograph—no, on the front of the photograph, so that in that way they are identified.

Q. Are the numbers which appear on the front of these photographs, to-wit, "3008" to "3014", inclusive, the numbers which you now refer to?

A. No, I refer to—let me see now—"9" and "10", you can see that down in the lower corner.

MR. HAYDEN: You don't object to my looking at those photographs a minute, do you?

THE WITNESS: Not a bit.

MR. MERRITT: No.

(Witness hands photographs to Mr. Hayden.)

MR. HAYDEN: I further object to any testimony on these photographs, on the ground that it is not shown by the evidence that these photographs illustrate in any way the condition that existed on the steamer on the day in question, having been taken at some subsequent voyage and at a subsequent time of course to the time of the accident, and don't show the condition that existed at the time of the accident.

A. Shall I proceed?

Q. (Mr. Merritt) Now you may proceed and take the photograph marked "Capers' exhibit A" and tell just where the camera stood and the lens of the camera was when this photograph was taken, and what portion of the vessel, if any, is included in this picture; describe fully?

MR. HAYDEN: Which one are you describing now, "A"?

A. The first four photographs, namely, Capers'

exhibits "A" to "D", both inclusive, were taken from the port lower box light of the steamer "Strathalbyn", and in taking these photographs I placed the camera with reference to two given positions.

The first position, which I will refer to as first position, was arrived at by measuring out from the inside wall of the port box light a distance of one and one-eighth inches plus one thirty-second of an inch plus three and one-fourth inches.

In taking exhibit "A", I attempted to place the camera in such a position that it would occupy just the place that would be occupied by the light, and also so that the inside edge of the lens of the camera would be flush with the point I have named as first position. However, the camera was found to be a little bit too wide to allow the lens of the camera to be exactly at first position, so exhibit "A" was taken from a position one-sixth of an inch further out from the inside wall of the box light than first position.

Q. (Mr. Merritt) When you speak of the light, are you referring to the flame of the light or the quality of the light?

MR. HAYDEN: I object to that. There was no light there.

A. I am simply going, Mr. Merritt, by the distances that were given me. I didn't see the measurements taken by which first position was arrived at.

Q. (Mr. Merritt) In other words, as I understand the lens at that time was one-sixth of an inch further out than the measurements that you have given?

A. Yes sir.

Q. Now, go ahead and state what portion, if any, of the vessel that exhibit "A" shows?

A. The camera there looks out over the forward portion of the vessel from the port box light, and in the foreground is standing myself; behind me is one of the longshoremen who was aiding in loading the vessel, and behind him is still another man who cannot be seen except the edge of his hat.

Q. What is the timber behind which you are standing?

A. The timber behind which I am standing, in ex-

hibit "A", is the first stanchion from the port box light, looking forward over the bow of the ship. The man next behind me is standing behind the second stanchion.

Q. Which direction was the camera pointed?

A. Towards the bow of the vessel.

Q. Was it pointed straight or at an angle?

A. It was pointed perfectly straight, that is, the camera was arranged perfectly even with the inside wall of the box light.

Q. Is that true of these four photographs, the exhibits that you have referred to?

A. It is true in each one of the four that I have mentioned as being taken from the box light itself.

Q. Explain what portion of the vessel is shown in exhibit "B"?

A. Exhibit "B" was taken from the same position that I have just described above with reference to exhibit "A", except what the inside lens of the camera was one-third of an inch further out than first position.

Q. Now, in this first position—so that we won't make any mistake—that first position, if I understood, included these first three measurements, or did it include this one-sixth of an inch additional?

A. The first position I referred to is the point which would be arrived at by adding together the distances that I gave above.

Q. The three distances?

A. The three distances; so that the one-sixth of an inch and the one-third of an inch are still additional to first position.

Q. Now, in taking—

Q. (Mr. Hayden, interrupting) Are you adding the one-sixth and one-third together for the second position? A. No sir.

MR. MERRITT: That is what I wanted to know.

Q. (Mr. Hayden) One-third is only plus—is in addition to the one and an eighth plus one thirty-second plus three and a quarter? A. Yes sir.

Q. (Mr. Merritt) Just so that there will be no mistake about it, give the distance out of the camera or the lens of the camera in taking exhibit "B"?

A. Exhibit "B" was taken with the inside edge of

the camera's lens the following distances from the inside edge of the box like wall—

Q. That is still on the port box light?

A. The port—the same box. (Continuing) —one and one-eighth inches plus one thirty-second of an inch plus three and one-fourth inches plus one-third of an inch. That is exhibit "B".

Q. Go ahead and explain what portion of the vessel is shown in exhibit "B", and where, what the different objects shown in that photograph are?

A. Exhibit "B" is taken with the camera placed in identically the same position as in exhibit "A", arranged in identically the same position, looking in exactly the same way, with the exception that the lens was one-sixth of an inch further out that it was in exhibit "A". It shows, therefore, the fore part of the vessel, except as shut off by a portion of the box light, and in the foreground I am standing behind the first stanchion. The man behind me is one of the stevedores or ship employes, I don't know which, who is standing behind the second stanchion.

Q. What were you standing on in these photographs?

A. I was standing on the top of the deckload of lumber. So were the other men shown in the photographs.

Q. Now, take exhibit "C"?

A. Exhibit "C" was taken by placing the camera with reference to what we will call the second position. The second position was arrived at by adding to the point named above as first position, the distance of one and thirteen-sixteenth of an inch. In exhibit "C" the outside edge of the camera's lens was placed flush with this point named as second position. The camera was arranged in the light box in the same manner as in the former photographs, exhibits "A" and "B", looking out over the bow of the vessel, showing the line of stanchions on the port side of the vessel, there being no one in the foreground to obstruct the view.

Q. Exhibit "D"?

A. Exhibit "D" was likewise taken from the same position that exhibit "C" was taken, that is, the outside

edge of the camera's lens being flush with second position. The only object is myself standing behind the second stanchion; I am standing on the deck load—the only difference between exhibits "C" and "D".

Q. Is the fact that you are in the foreground?

A. That I am in the photograph in "D".

Q. Now take exhibit "E" and state?

A. Exhibit "E" was taken by placing the camera in this position: We located the camera on the top of the second stanchion, that is to say the stanchion second from the edge of the bridge on which the port box light sits.

Q. Which box light, the upper or lower?

A. The lower.

Q. On the same side, the port side?

A. On the same side, the camera looking to the rear or the stern of the vessel. I am standing behind the port box light on the lower bridge.

Q. How was the camera pointed with reference to the side of the box light—the inside of the box light?

A. Well, it was even, that is, as even as we could get it judging—going by the stanchions; we placed the camera with the inside edge of the camera—not the lens—even with the inside edge of the second stanchion, so that this would throw the lens itself in just the center of the stanchion.

Q. And that photograph shows what?

A. That photograph shows the first stanchion out from the bridge, in the foreground, with a rope around it.

Q. And shows what box light?

A. I am standing behind the lower bridge port box light.

Q. Now take "F"?

A. "F" was taken by placing the camera in the same way that it was placed on the second stanchion, except that it was placed in exhibit "F" on the top of the first stanchion. The object in the foreground is the port box light, lower bridge, about which we have been talking.

Q. Where and how on this stanchion was the camera placed?

A. In the same way that it was placed on the second stanchion, that is, the lens of the camera was in the

center of the post, the stanchions being I believe 10-inch stanchions.

Q. And how was it pointed with reference to the box light or the light box?

A. It was pointed straight back. We made no effort to point it directly at the box; it was,—as you can see there from the edge of the bridge and the vessel, it was looking directly back to the stern of the vessel.

Q. Now take exhibit "G"?

A. Exhibit "G" was taken from the top of a shed. The vessel was warped up to the wharf there, with her port side to the wharf. If you will turn back to exhibit "C", you will see a lumber shed which appears off to the left there and down on the wharf itself. It has lumber stacked under the top, and a sloping roof. That was the only object on which we could get to take a snap of the port box light from the front of the vessel.

Q. How was the camera pointed?

A. The camera was pointed in such a way that it would take in the name "Strathalbyn" and as much of the ship as possible, including the lower bridge port box light.

Q. Whereabouts with reference to the port lower bridge box light was the camera or the lens of the camera pointed in this exhibit "G"?

A. It was not pointed directly at the box light itself, the camera being turned a little bit more to the left in the picture. You can see from the picture itself that the camera was looking just about directly at the foremast—I suppose you call it the foremast—of the vessel, so that the name "Strathalbyn" and the whole fore part of the vessel is shown in the picture. That would make no difference whatever, however, as to the line of vision with reference to any object shown in the picture.

Q. This exhibit "G" shows what portion, then, of the vessel at that time?

A. It shows the port bow of the vessel, in fact it shows the whole port side clear back to the stern; it shows the line of stanchions on the port side, supporting the deckload of lumber; it shows the lower port box light; just above and partially inside of the first stan-

chion it shows the entire upper bridge, and it shows the men there engaged in loading lumber.

Q. Was the vessel completely loaded at this time?

A. No sir.

Q. I think that covers each of the exhibits.

A. That is all the exhibits.

MR. HAYDEN: Of course my objection it is understood goes to each of these exhibits.

CROSS EXAMINATION.

Q. (Mr. Hayden) Did you take any other photographs than these? A. No sir.

Q. No further photographs were taken by Mr. Nowell than these? A. No sir, they were all we took.

MR. MERRITT: By the way, I offer now in evidence exhibits marked "Capers' exhibit A", "Capers' Exhibit "B", "Capers' Exhibit C", "Capers' Exhibit D", "Capers' Exhibit E", "Capers' Exhibit F" and "Capers' Exhibit G".

MR. HAYDEN: To all of which we object on the ground that there is no testimony showing that the condition depicted in these photographs is the condition that existed at the time of this accident in question here; and on the further ground that from the other evidence in this case, that has been introduced by the respondent, the photographs are shown to be absolutely dissimilar from that which was shown by the evidence heretofore taken; and move to strike out all the evidence in the case in connection with these; and cross examination is subject to that motion and without waiving it.

Photographs above offered in evidence are hereto attached and returned herewith, same being marked, respectively, "Capers' Exhibits "A" to "G", both inclusive.

Q. (Mr. Hayden) Mr. Capers, how far forward of the forward end of the bridge was the first stanchion shown in these pictures?

A. It was just about five feet forward, that is, the edge of the stanchion itself was substantially, a few inches either way, five feet from the outside edge of the lower bridge—that is, the forward edge of the lower bridge. I measured it, but I don't exactly recall now. It was either five or five and a half feet. Oh, no, I can give it to you exactly. (Witness referring to paper.)

I find my memorandum here. The first stanchion was four feet ten inches from the outer edge of the bridge.

Q. (Mr. Merritt) You say the outer edge; you mean the forward edge?

A. The forward edge, yes sir.

Q. (Mr. Hayden) What was the height of the stanchions?

A. I didn't measure the stanchions.

Q. What was the length of the stanchions?

A. About 16 feet.

Q. Was the camera on a level when these pictures were taken? A. Yes sir.

Q. And the stanchions were substantially the same length all along the side of the vessel, were they?

A. Not exactly, but substantially. You can observe, from exhibit "C", pretty well the relative height of the different stanchions. The second stanchion, for instance, is six inches lower than the first. There are one or two further out that are higher than the first—probably six to eight inches higher.

Q. The second stanchion was lower than the first stanchion? A. Yes sir.

Q. Six inches? A. Just about six inches.

Q. How far was the second stanchion from the first stanchion?

A. I think it was about—let me see—I didn't measure it—I should say four or five or six feet.

Q. You did not measure it?

A. I did not measure it exactly, no sir.

Q. The third stanchion forward was how much higher than the first stanchion?

A. I didn't measure it.

Q. And the fourth forward was how much higher than the first? A. I didn't measure that.

Q. And the fifth?

A. I didn't measure any of them outside of the—

Q. (Interrupting) Well, your idea of it?

A. Well, I guessed it a while ago, as near as I could; I should say that the stanchions are—

Q. (Interrupting) Substantially—

A. (Continuing) —are substantially all sixteen

foot stanchions, but that as shown here one or two are lower than the rest of them.

Q. I see.

A. They are not absolutely even, in other words, all the way along.

Q. Did you notice the lights in the forward part of the house? A. The what?

Q. The lights, the light-holes, the port-holes in the forward part of the house? A. No sir.

Q. The glass port-holes in the forward part of the house? A. No sir.

Q. Where the lights go into the cabin underneath this deck on which the port light screen is located?

A. No sir.

Q. How much below the deck was this cargo of lumber?

A. By examining exhibit "E" you can get a fair idea of it. I should say that the top of the deckload of lumber at that time was about five feet from the top of the first stanchion. The first stanchion, as you observe, extends above the floor of the bridge—the lower bridge—so that I should say the top of the load of lumber is in the neighborhood of four and a half feet.

Q. Yes, but the lumber was higher in the center, was it not, than it was on the side? A. No sir.

Q. Look at this left hand—

A. That is not lumber, that is a part of the ship, that is a part of the ship; you see this down here, that is a part of the ship itself.

Q. The lumber then went under the bridge, did it?

A. No sir, it didn't go under the bridge. The ship is built in there—I don't know what you call it—but a part of the cabins. You can get an idea from looking at these—

Q. (Interrupting) You say this left hand corner of exhibit "E" is a part of the house?

A. Yes sir; and if you will look at exhibit "G" you can see that that is the case—the white portion there under the bridge being a part of the ship's body or a part of the cabins themselves. The fact is the captain's cabin is in there.

Q. But the front of the house is all flush with the

forward— A. (Interrupting) Edge of the bridge.

Q. (Continuing) —edge of the bridge?

A. That is true, yes sir.

Q. So that there is an optical delusion there in that picture when you show the side of the house to appear to be forward of the forward edge of the bridge?

A. No, I don't say so.

Q. You don't think it does appear to be forward of the forward edge of the bridge? A. No sir.

Q. It looks so to my eyes. And it looks to my eyes as if the lumber was further aft than this side of the house, referring now to exhibit "E".

A. You see there, Mr. Hayden, where I am standing in this exhibit "E" behind the light box, the bridge extends out from the portion of the cabin or ship to which it was attached. It may be that a few—that the ends of the deck load of lumber here extended in a little bit, I would not say as to that, but I think it is substantially flush with the front side of this part of the ship under the bridge.

Q. How far is this boat davit, shown immediately aft of the aft end of the light screen in exhibit "F", from the aft end of the light screen? A. This?

Q. Yes. A. My dear sir, I didn't measure that.

Q. It is very close, isn't it? A. I—

Q. (Interrupting) You remember you had some difficulty in getting your camera placed in there, because of it?

A. It is pretty close, yes; I should say probably three feet.

Q. Oh, no, it is closer than that.

A. I don't remember. I don't think it is. It may be—

Q. (Interrupting) You had difficulty in getting the camera in there, you could not stand in between the davit and the light screen and stoop down so that you could put your camera there, could you? A. We did it.

Q. Well, but you—

A. (Interrupting) We got in there all right.

Q. You were standing in there yourself, but your shoulders were back of this davit when you fixed your camera in there, were they not?

A. You say my shoulders—you ask if my shoulders were against this davit?

Q. Your shoulders were back of it, your head was in front of it?

A. Oh, no. Referring to exhibit "E", Mr. Hayden, I am standing between the box light and the davit you are speaking about, and I haven't the slightest difficulty in the world in standing there with entire comfort.

Q. Yes, I see that you are, but that does not answer the question. There is room for a man to stand in a place of that kind, where there would not be room for a man to stoop and get down so that he could look over the box, isn't there?

A. I should think that would depend very largely on the build of the man.

Q. Yourself, of your build?

A. It would not interfere with me at all.

Q. Can you stoop down and take as little space as you can when you are standing up? A. Why, no.

Q. That is what I am talking about. So I say when you were trying to place that camera on the edge of the box there was not room for you to get down so that your eyes would be on a level with the camera and be in front of that davit?

A. It would not be possible to place your eyes on a level with that camera by any position at all with the camera in the box, it could not be done.

Q. You put your camera right in that box, did you? A. Yes.

Q. Down at the bottom of the box?

A. Down on the floor of the box.

Q. Down on the floor of the box? A. Surely.

Q. Not on top of the box?

A. Oh, no, it was resting—

Q. (Interrupting) Right on the floor of the box.

A. Resting on the floor of the box.

Q. How high was the lens above the floor of the box?

A. The camera was one of these cameras—I presume about ten inches square, one of these extension cameras. Folded up it was some three—two and a half or three inches wide, and extended out of course; you

get your focus by extending it back and forth, but I should say that the camera is about ten inches or perhaps twelve inches wide at the back.

Q. Wide at the back? A. Yes sir.

Q. How high is it at the back, about the width—

A. (Interrupting) Square, just about square; I think it is about square.

Q. About the width of these pictures, isn't it?

A. Well, I don't know—

Q. (Interrupting) There is very little room, very little of the camera either above or below the edge of the pictures, isn't there? Is this a film camera or is it a plate camera? A. Put in a plate at the back.

Q. A plate camera? A. Yes.

Q. You know, then, that the plate occupies practically the whole of the back of the camera, doesn't it?

A. Not altogether, no. It occupies a substantial portion, almost all of it, but not all; the camera is larger than that picture—the back of it.

Q. Probably a half an inch, isn't it?

A. No, the camera is larger than that, I think, Mr. Hayden. I am quite sure that the camera was ten by ten easily.

Q. I presume we would have no difficulty finding out exactly about that, would we? A. Oh, no.

Q. We might go down and see that camera, to get this into the record, and then put it into the record after we have seen it.

MR. MERRITT: Yes.

MR. HAYDEN: I will leave it with Mr. Richards and you to put in that distance. I want to get how high the lens of the camera is above or how high it was above the bottom of the box when you placed the camera in the bottom of the box.

THE WITNESS: Yes. All right, I will put that in. Let me say now, in order to complete the record, that when I shall have had an opportunity to examine and measure this camera, I will insert, as a part of my testimony, the measurements you desire.

MR. HAYDEN: You don't need to put that in there.

MR. MERRITT: Just say the camera was so large

and the lower edge of the lens was whatever it is.

MR. HAYDEN: Inches.

MR. MERRITT: Inches above the bottom of the camera.

MR. HAYDEN: Yes, and of course the camera sets on the box and would be above the bottom—

MR. MERRITT: (Interrupting) And he can get that measurement, whatever it is, and put it in there.

MR. HAYDEN: Mr. Richards can check it up, and I will take Mr. Richards and you. You know the camera, of course? A. Yes.

Q. (Mr. Hayden) It was one of the ordinary Eastman folding kodaks, wasn't it?

A. No, I can't say, Mr. Hayden; I didn't take the camera over. It belongs to Mr. Nowell and he took it from the stock.

Q. Why do you say these were 16-foot stanchions?

A. I simply judge that.

Q. Referring now to this exhibit "C", I want to ask you if you know what object that is to which the arrow points, at the top of the arrow being a mark "X"—what is that? A. That is a portion of the box light—

Q. (Interrupting) No, no, this up here.

A. Oh, yes, I beg your pardon.

Q. This object that that arrow points to?

A. (After examining) That is some portion of the vessel, some sort of a pole, but whether it is a davit or what I can't tell from that. It is shown in two or three of the others. Let's see if I can tell from this one. (Examining) I don't know.

Q. But you do know it is a portion of the vessel?

A. Yes.

Q. Referring to your exhibit "F", what is that object to which the arrow points in the light box?

A. That is the iron hook attached to the inside wall of the light box, on which the port box light is placed when in the box.

Q. Did you notice any hole through the box in the vicinity of that iron hook?

A. I don't recall noticing any now, Mr. Hayden. If I am not mistaken, there was a hole in the box, but

just whereabouts I don't now recall. I think it was in the bottom.

Q. I suggest to you, wasn't it right behind that iron bracket so that you screw on the lamp?

A. Possibly was.

Q. Is that your recollection of it now?

A. I think it was just about there.

Q. The object being so that you could screw the lamp on through there?

A. Very likely, yes sir. I didn't notice all those incidental details. I didn't have time to take an entire survey of the vessel.

Q. You did not take any picture from directly ahead of this vessel—

A. (Interrupting) There was no place—

Q. (Continuing) —from the bow?

A. There was no place to place the camera.

Q. Well, while you were aboard this vessel did you observe whether or not you could see that light-screen from a point directly ahead of the vessel on her deck or the deck load of lumber?

A. Do you mean by that the—what do you mean by light-screen, is that the lamp itself?

Q. This is the light-screen we have been referring to here, this box, as you call it; you could see that, couldn't you, from the deck of the vessel?

A. Why, I did not—there was no space to stand except along this deckload of lumber there, and as none of these stanchions extend above the box light, that is, higher than my head, why, of course if I stood on the edge of the vessel here and looked over the stanchions I could see it.

Q. Now, standing alongside of the stanchions on the inside and on the deckload and looking along aft, could you see that box light? A. I didn't try it—

O. (Interrupting) What is your opinion about it now? You were over there?

A. I think if I placed myself behind one of those—any one of those stanchions and looked over it, I could possibly see it.

Q. Well, if you were on the deck load toward the center of the ship, but right up against those stanchions,

and looked aft, you could have seen the light also, couldn't you?

A. I could not say either way; I don't know; I did not try it.

Q. Well, were those stanchions inside or outside of the line of the light, looking forward, as you saw them?

A. That is shown by the photographs much better than I could say.

Q. Just answer me. Never mind the photographs.

A. They were outside.

Q. If you were standing inside looking aft, there is not any question but what you could see the light, is there? A. Quite probably.

Q. I want to know whether in your mind there is any question about it?

A. Well, without having tried it, it would be pure guess work. I think possibly you could.

Q. That is your impression?

A. That is my impression.

Q. Your best understanding?

A. It is quite possible.

Q. There is not any doubt of that in your own mind, is there?

A. There are several reasonable doubts, as I have explained in previous questions, that without having absolutely made the test I will not be positive either way.

Q. So you will not be positive that you could see that light screen when you saw that light-screen from a position alongside of the forward stanchions on this deckload of lumber, when you testify all the stanchions are on the outside of that light-screen?

A. I will not be positive, Mr. Hayden.

Q. I want to ask you, now, if you will refer to your exhibit "C" and to this object that I have marked with an "X", and I will ask you if you were standing alongside of this stanchion which I have marked here "A", if you could not have seen the light-screen, the whole of it?

A. Basing my opinion on the picture and the arrangement that you have made with the marks on the exhibit, I should think I could, provided I placed my face or eyes in the exact place occupied by the pole there and marked "X".

Q. I want you to take exhibit "G" and draw a mark on it from the light-screen, as it appears in that exhibit, without obliterating or of course marring the screen itself?

A. I will indicate it with an "X". (Marking)

Q. Just draw a line, an arrow point to it, if you can. Don't put it on the light-screen itself, but just come to the light-screen.

A. (Witness marks) I have drawn a pencil mark on the face of the exhibit "G", indicating the light-screen, and have marked the pencil mark with an "X".

Q. Now, will you draw a circle around the light-screen so as to make it more definite?

A. Sure. (Marking) I have drawn in pencil, upon the face of the exhibit, a round circle around the box.

Q. This apparently square object above the end of the stanchion is the light box?

A. Yes sir, that is correct.

Q. Now, was this house that is shown in exhibit "C" higher or lower than the deckload of lumber at the time this photograph was taken?

A. It was a little bit lower than the deckload of lumber.

Q. A little lower? A. Yes sir.

Q. Whereabouts on that house did you stand when you took the picture "G"?

A. We stood with the camera placed rather close to the end of the shed which would be next to the vessel; that is to say, the camera was not identically on the edge, but it was some three or four feet back from the end of the shed. The camera was just about where the outside edge of the first stanchion strikes the top of the shed in exhibit "C"; just about there.

Q. Was the camera resting on the shed?

A. It was on a pole, or it was on one of these tripods—what do you call them?

Q. Tripods? A. Tripods.

Q. And how high was that tripod?

A. Oh, the tripod I should say stood up five feet.

Q. Higher than your head?

A. No, no, from the top of the shed.

Q. Well, would it be five feet higher than your head?

A. No, no, I should say just about on a level with my head; just about. They can extend or lower those tripods, at pleasure, and as I did not arrange it I can't say exactly the height.

Q. How tall a man are you?

A. Five feet six and a half. Mr. Nowell, who took the photograph—all the photographs, is just about my height, possibly an inch or two taller.

Q. So that you would have to stand up practically straight, then, to see into and through the camera with the tripod the way you had it? A. Yes sir.

Q. In this exhibit "C", the first stanchion apparently is a very considerable distance to the left of the block in the forward end of the screen? A. Yes sir.

Q. Can you tell me how far the inside edge of the first stanchion would be from a line projected forward of the light-screen and parallel with the block in the forward end of the light-screen?

A. You want that from direct information, or measurements, or judging from that picture?

Q. If you have it in measurements, I want measurements.

A. I have not measurements. I would have to base it on that picture.

Q. Well, base it on your recollection.

A. I would say that the inside edge of the first stanchion was substantially ten to twelve inches further out than would be a line projected in the manner that you have stated.

Q. Now, were the row of stanchions substantially on a line with each other—the tops of them?

A. Do you mean as to height or as to portions inside or out?

Q. Inside or out—portions inside or out.

A. They varied a little.

Q. Not very much?

A. Not very much, no sir.

Q. Now, I want to call your attention to exhibit "E", and, after looking at that exhibit, I would like you to tell me how much you consider the inside of the

stanchion would extend outside of a line projected forward of the forward end of the block—from the block in the forward end of the light-screen.

A. Basing the answer upon my knowledge of the manner in which the photograph was taken, that is, with the camera about even with the middle of the second stanchion, I see no occasion to vary the first opinion, that is, from ten to twelve inches outside of a line projected forward from the screen. I think that is about correct.

Q. What was the size of these stanchions?

A. I judge them to have been 8 by 8s or 10 by 10s.

Q. They were square, were they?

A. Yes, they were square. More probably 10 by 10s.

Q. If these photographs "A", "B", "C" and "D"—well, as I understand you, the stanchions were as a matter of fact lower than the light-screen?

A. Yes sir.

Q. The bottom of the light-screen?

A. The second stanchion I should think would be lower than the floor of the light-screen or bottom of the light-screen.

Q. Now then the first stanchion was six inches higher than the second stanchion?

A. Just about five or six inches higher, yes sir.

Q. And in photography the object that is nearest to you, if a picture is taken to show a perpendicular situation, and the camera is placed below the object, as between you and another object, it will raise the apparent height of the object that is between, will it not?

A. Well, yes, a camera—photography differs in no way in that respect from any other perspective.

Q. So that in exhibit "E", this object from which I have drawn a arrow is the first stanchion—

A. (Interrupting) Yes sir.

Q. (Continuing) —forward of the bridge?

A. Yes sir.

Q. And that stanchion was six inches higher than the second stanchion?

A. Just about, yes sir.

Q. And your camera was resting on the second stanchion? A. Yes sir.

Q. And your camera was about six feet forward of this first stanchion?

A. Five or six feet, somewhere in the neighborhood.

Q. And the light-screen was four feet and a half aft of the first stanchion?

A. No, the light-screen was more than that. The edge of the front of the bridge was four feet ten inches from the back side of the first stanchion.

Q. Oh, yes.

A. The box, as you observe, is still further aft.

Q. Yes, that is what you testified to, I made a mistake there, so that the box is still further aft?

A. Yes sir.

Q. In this exhibit "E", considering the location of the camera when it was taken, the apparent height of that stanchion is not correctly shown, is it?

A. Yes, I think it is, with reference to the light-screen, for this reason: The lens of the camera resting upon the second stanchion would necessarily be higher than the top of the stanchion, and at the time we took that photograph I observed that the lens of the camera was substantially on a level with the top of the first stanchion. As you observe there from an inspection of exhibit "E", the top of the first stanchion is just about flush with the bottom of the light screen. If the camera were looking down upon it, of course you would see a portion of the top.

Q. Which you don't see, any portion of the top of it?

A. You don't see any portion of the top.

Q. So that camera is a little below it?

A. No, not necessarily. I think it is just about flush with it. In fact I judge it to be just substantially—just about even with the top of it. Wouldn't you say so, from an inspection of the photograph?

Q. It looks to me as though it were about even with the top of it, as near as I can tell.

A. Yes, I think it was.

MR. MERRITT: It looks to me as though it was

a little bit above it, looking down on top of that stanchion; below, lower than it really is.

A. In exhibit "E" it is clear to observe that the camera is looking down on the floor of the light-screen itself, slightly; and measuring now the first stanchion as shown in exhibit "E" with the floor of the box light, I would say the top of the first stanchion is an inch or two or three above the bottom of the box light.

Q. Then the apparent height of the stanchion in your exhibits "A", "B", "C" and "D", is very much exaggerated, is it not? A. The what?

Q. The apparent height of the stanchion is very much exaggerated in those pictures?

A. I don't think so.

Q. Above the bottom of the box?

A. Oh, I can't say that it is exaggerated. It is just exactly like it would look if you had your eye there. There is no other way to take a photograph from that position.

Q. Doesn't that look to you to be considerable more than a couple of inches above the bottom of that light screen? A. No.

Q. It does not? A. No.

Q. All right, that is all I want to get at. Referring to your exhibits "A", "B", "C" and "D", this dark object prominently in the foreground, with a black spot and another round circle in about the center of it, is the block in the forward end of the light-screen, is it not?

A. Yes sir.

Q. Would you mind writing across there "block"?

A. In each one of them?

Q. Yes. Just write it right on the thing itself, in good big letters so that we will understand just what it is.

A. (After writing with pencil) I know whether this is going to show or not.

Q. It will show. If you had a pen and ink here you could write it better.

A. (Witness writes the word "Block" with pen and ink on the exhibits referred to.)

Q. I wish you would take your exhibits "E" and "F" and write on each of those exhibits the block in

the forward part of the light-screen, corresponding with the block that you have just designated in exhibits "A", "B", "C" and "D".

A. All right. (Witness writing "Block" with pen and ink on exhibits "E" and "F" referred to.)

Q. You were not on the "Strathalbyn" at any time previous to the time you took these pictures, were you?

A. Yes sir.

Q. You were not on the "Strathalbyn" when her deck cargo was on that was on her at the time of the accident, were you? A. No sir.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) Do you remember whether or not there was any small vessel lying forward and on the port bow of the "Strathalbyn" at the time these pictures were taken?

A. A small vessel lying off the port bow?

Q. Yes.

A. I don't recall now, Mr. Merritt, but I am under the impression there was none.

Q. You don't remember whether there was or not?

A. I don't remember, no sir.

Q. Referring to the object which has been marked by an arrow on exhibit "C", I will ask you to look at exhibit "G" and see if you can see any similar pole or object on the forward part of the vessel there, whether you can see anything answering to that object on the forward part of the vessel, on exhibit "G"?

A. What I take to be the corresponding object on exhibit "G" is an iron post or stanchion, being the first, and a series of similar posts running from the last of the stanchions around the curve of the vessel's bow, through which an iron cable is run through the top. I will mark it, if you wish, on exhibit "G"—

Q. (Interrupting) No, I don't care anything about marking it. A. To identify it—

Q. Of course that is simply what you —

A. (Interrupting) I assume that it is the same object.

Q. You don't know whether it is or not?

A. I don't know absolutely.

Q. It may have been something off the vessel that appeared there in the picture?

A. It is possible, but I hardly think so.

Q. You speak about that iron cable or iron stanchion on the forward part of the vessel, through which this cable is run. Can you see, in exhibit "C", the second of those iron stanchions as shown in exhibit "G"?

A. No sir.

Q. You did not undertake at this time to see just what could be seen from those various positions, did you?

A. No, sir; I had not time to take all these different measurements that have been inquired about here.

Q. Could you have seen what appear in the photograph if your eyes had been placed in the same position as the lens of the camera?

A. Certainly, undoubtedly.

Q. And whatever then is shown in the photograph you could have seen if you had been in the same position?

A. Yes sir.

Q. And nothing less and nothing more?

A. That is my opinion.

(Witness excused.)

MR. HAYDEN: I cannot go ahead. I made demand, and I want to renew the demand, I want the plans of the hull of the steamer "Virginian", her plating plans and such other—I don't know just exactly what to designate them, but I want to get those plans that show the location of her water tank forward and the location of her decks, and my intention is to demand the plans that are drawn to scale; in addition, of course, to the demand that I made in San Francisco, if there is anything in addition to them.

MR. MERRITT: That covers all that Lawrence told me you demanded. I don't know what it was.

The witness Capers, after making measurements in the presence of Mr. Richards, states that:

"The back of the camera box is 10 inches by 11 inches.

The bottom edge of the lens, adjusted to its lowest point, is five and thirteen-sixteenths inches above the

top of the surface on which the camera rests. From this it can be raised a height of about two and one-fourth inches. At the time the photographs were taken the lens was substantially at the lowest point to which it could be adjusted.

The size of the plate is six and one-half inches by eight and one-half inches."

JOHN ALBERT VILLIERS, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) State your full name?

A. John Albert Villiers.

Q. Where do you reside? A. Mukilteo.

Q. What is your business? A. Longshoring.

Q. How long have you been engaged in that business? A. About sixteen years.

Q. Do you know the steamer "Strathalbyn"?

A. I do.

Q. Did you assist in loading her at Port Blakely, in December, this month—

A. (Interrupting) I did.

Q. (Continuing)—this year. Had you ever loaded vessels with deckloads of lumber prior to that time?

A. Yes sir.

Q. Do you know how the "Strathalbyn's" deckload was loaded at this time? A. Yes sir.

MR. HAYDEN: I want to object to the testimony on the ground that it is immaterial.

Q. (Mr. Merritt) Showing you the photograph marked "Capers' Exhibit G", I will ask you how much more load was placed on the vessel than is shown in that photograph, if you know? (Handing photograph to witness).

A. As far as I can see from here, you see you can't see the break aft there. It looked to be about the height of the timber, and that was a 10-inch tier.

Q. Were you there when she finished loading this time? A. I was.

Q. Do you know they fastened that deckload and the stanchions that held it on the side?

A. Do you mean how they placed the stanchions?

Q. No, how did they fasten them or bind them—if they do—do they bind them together in any way?

A. Well, when we left there they had not put the leashings on, but the leashings that they had ready to put on were chain leashings made fast to the rail and brought over the deckload, and at times they bring wire leashings around the stanchions and pull them tight or taut with the windlass.

Q. Have you ever helped in fastening the stanchions by a chain or cable around the stanchion and fastened or drawn tight with the windlass? A. Yes sir.

Q. I will ask you how much, in your opinion, from your experience in fastening deckloads of this kind, the stanchions of a size like that shown in this exhibit "G", could be sprung inboard in fastening them as I have just described?

MR. HAYDEN: I want to object to the question on the ground that it is not based on the facts in evidence in this case, and that the witness has not shown that he is competent to testify in connection with that subject matter.

Q. (Mr. Merritt) Assuming, in answering the question, that a deckload was loaded to a height of say one tier above that shown in exhibit "G", and then cables placed around the stanchions and drawn tight by steam wench, and that the stanchions were substantially of the size shown in exhibit "G" here, of say 10 by 10, how much in your opinion, from your experience as a long-shoreman in tightening or fastening loads of that character, could they spring those stanchions inboard?

MR. HAYDEN: Same objection.

A. Will I answer that question?

Q. (Mr. Merritt) Yes.

A. With a properly placed stanchion—that is, this is a little lighter—you see where they heave in they leave a stanchion out there, they put that in afterwards; that is only one on each side, you see, and with the other that is properly placed they could not heave it in, no matter how much power you had on. I don't believe

you could heave it in more than three inches, at the most.

Q. If any of her deckload was light lumber instead of this heavy timber as shown in this exhibit "G", could you spring that stanchion in any more, and, if so, how much, in your opinion?

A. With the same size stanchions it would not make any difference in springing the stanchion in where the break of the lumber came with the deckload.

Q. How are these deckloads put on, loosely or solid, or how?

A. They are stowed tight as you can get them.

Q. Now, when you come to spring these stanchions and tighten them up as you have described, where does the spring of the stanchion come from, where does it start, that is, when does the stanchion commence to spring when you draw it up that way?

A. If the lumber is stowed properly out against the stanchion, it breaks right at the edge of the deckload.

Q. Right at the edge of the deckload? A. Yes.

Q. That is, you mean the top—

A. (Interrupting) Spring from there to the top.

(No cross examination. Witness excused.)

(Filed Feb. 25, 1914.)

L. CRAWLEY, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBEL-ANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name?

A. Lawrence Crawley.

Q. What is your business?

A. Well, I am mate on the "Fulton" at the present time.

Q. I mean what is your general occupation?

A. Well, sailor, I have been for quite a while.

Q. How long have you been a sailor?

A. I have been on Puget Sound here for the last nine years—about nine years.

Q. Were you on the steamship "Flyer" on the night

of January 12th, 1912, at the time the "Virginian" and "Strathalbyn" were in collision? A. Yes sir.

Q. The "Flyer" was on the voyage from Seattle to Tacoma, was she? A. Yes sir.

Q. In what capacity were you engaged on the "Flyer" on this night? A. I was quartermaster.

Q. Quartermaster, with what duties?

A. I was at the wheel.

Q. The wheel is located in the pilot house, is it?

A. Yes sir.

Q. Who was in the pilot house with you?

A. Captain Burns.

Q. Do you remember of passing a large vessel in the vicinity of Pully Point? A. Yes sir.

Q. I wish you would describe how you passed the vessels and what changes in your course you made, if any?

A. Well, we were coming up behind this ship and we hauled off, we hauled to port a little, to clear the "Virginian" I guess—the big ship—and then we kept our course until after we went by and passed the next ship.

Q. You hauled your course to port; did that carry you to the westward? A. Yes sir.

Q. How far off did you pass the "Virginian", if you remember?

A. Well, in my judgment about 200 to 300 or 300 feet, something like that.

Q. Did you signal the "Virginian" at all as you passed her? A. Yes, I believe we did.

Q. Did you hear any response from the "Virginian"?

A. Well, that I could not say; I could not at present say.

Q. Now, after passing the "Virginian", did you hear the lookout report any other vessel?

A. After passing, yes, he did, he reported a steamer, reports the lights of a steamer.

Q. What lights did he report, if you remember? Did you hear the report?

A. Well, a white light ahead, sir.

Q. Did you see that white light, Mr. Crawley?

A. I thought I did.

Q. You thought you did?

A. I thought I did, yes sir.

Q. And where was the white light when you saw it or thought you saw it?

A. Well, that light was—seemed like it was in the ship—we were coming like this, in this direction, and the ship would be about that direction (illustrating), maybe a half a point off of our port bow, as near as I could judge.

Q. Did you at that time see any other lights except the white light on this larger vessel?

A. I was inside of the pilot house. I could not very well always tell, but I am pretty sure I did see a light, but I would not say whether I saw more than one light or not.

Q. What did you think that light was, what was the color of it? A. It was a white light, as I thought.

Q. I mean did you see any other lights?

A. No sir, no other lights.

Q. Now, you made no change in your course after passing the "Virginian" until after you passed the "Strathalbyn", did you?

A. No, no change, we still kept our course until after we went by.

Q. How was that course carrying you with reference to Robinson Point?

A. Carried us inside of Robinson at least a point.

Q. And did you afterwards pass this other vessel?

A. No, after we—we kept our course until after we passed this steamer and then one time we hauled right around, came right around back to the—

Q. (Interrupting) That was after the collision?

A. That was after everything was over.

Q. But prior to the collision you kept on this general course until—

A. (Interrupting) We kept on our same course.

Q. And how far did you pass off this steamer when you passed her abeam?

A. Well, I don't think it will be over a quarter of a mile to a half a mile, something like that, as near as my judgment could say; that is about all I could say about it.

Q. As you were approaching this steamer, Mr. Crawley, were you coming closer to her, or your course coming closer or nearer parallel or spreading away from her course?

A. As we came to her we would be spreading from her, you see; if we came up to her she would be coming and we would be going like this, the direction of it. (Illustrating.)

Q. Now, Mr. Crawley, at the time you were looking and thought you saw a white light, were you looking through the pilot house window? A. Yes sir.

Q. Afterwards, did you see any side lights on her, as you passed her?

A. No sir, the windows were all down, as we went abeam and there was no side light that I could see at all.

Q. Did you hear the lookout report any side lights?

A. No sir, he didn't report no side lights.

MR. HAYDEN: I want to move to strike out the report of the lookout, on the ground that it is hearsay.

Q. (Mr. Bogle) Did you see the green light at all?

A. No, not any time until we came back after the collision was all over.

Q. You say that Captain Burns was in the pilot house with you? A. Yes sir.

Q. Was he in the pilot house when you passed the "Strathalbyn"?

A. Yes sir, he was there. He kind of got kind of nervous at the time we were going by the "Strathalbyn", too.

MR. HAYDEN: I move to strike that out as immaterial.

Q. (Mr. Bogle) When was this, Mr. Crawley—

MR. HAYDEN: (Interrupting) Same objection.

Q. (Continuing) —when you were abeam of her?

MR. HAYDEN: Same objection.

A. Right abeam.

Q. (Mr. Bogle) Right abeam? A. Yes sir.

Q. Did he make any remark about this side light?

MR. HAYDEN: Same objection; on the ground that it is hearsay.

A. He could not see no side lights at all.

Q. (Mr. Bogle) How do you know he could not see any side lights?

MR. HAYDEN: Same objection, on the ground that it is hearsay. This witness cannot tell how the captain knew—how he knew the captain could not see anything if he did not see anything.

Q. (Mr. Bogle) How did you know that he did not see the side lights?

A. He made the remark, he says, "She has not got no side lights; she has not got no light burning."

Q. Was that the time he seemed to get nervous?

MR. HAYDEN: I object to that on the same ground.

Q. (Mr. Bogle) Go ahead, answer.

A. Well, he was a little nervous at the time, yes.

Q. You say he got nervous?

A. He drops one window down and then the other came down—three windows came down, one window after the other.

Q. That was all the remark he made, was it?

A. That is all the remark—he says, "Those ships are getting close together"—something like that—he just made the remark. He didn't have much to say outside of dropping the windows down kind of lively.

Q. This light that he was talking about would be a port light, would it?

A. Well, port light was supposed—was all I could see, and he remarked the port light out; she didn't have no side light.

MR. HAYDEN: I move to strike it out—the last answer.

Q. (Mr. Bogle) Did you pay any particular attention to the signals passed between the "Flyer" and the "Strathalbyn"?

A. Well, I think first he gave a signal and we answered it.

Q. Did you pay any particular attention to the signals—to other signals blown by the "Strathalbyn"?

A. No, I didn't. I don't think I did. I heard some whistles after we passed, but didn't pay any attention to either of them.

CROSS EXAMINATION.

Q. (Mr. Hayden) Are you working on the steamer "Fulton" now? A. Yes.

Q. As mate? A. Yes sir.

Q. How long have you been on her?

A. I have been on her just one month the 25th—

Q. (Interrupting) Who is captain of her now?

A. Captain Stimson.

Q. Is Haynes the manager of the company?

A. I think he is.

Q. Erkenbach?

A. Or Mr. Erkenbach I know is assistant manager.

MR. BOGLE: I object to this as immaterial.

Q. (Mr. Hayden) How long have you been with that company? A. Just there a month.

Q. What were you doing between that time and the time of this collision?

A. I was mate on the "Sampson", on the "Comanche", and I have been on all these boats up until a month ago I went on the "Fulton".

Q. On the "Fulton"?

A. Since a year ago in April.

Q. You drew up on the "Virginian" when she was north of Pully Point, didn't you?

A. When she was north of Pully Point? Well, we were about abeam of Pully Point, as near as I can judge, we were close to the point.

Q. You changed your course before you got to Pully Point, did you not? A. We did.

Q. To pass the "Virginian"? A. To pass the "Virginian", yes sir.

Q. You changed it how much?

A. We changed it—I would not say how much; we changed it at least a quarter of a point to clear her, to go by, and we still kept the course until we got by her.

Q. You were steering what course prior to your change of course for the "Virginian"?

A. How is that?

Q. What course were you steering before you changed your course to go by the "Virginian"?

A. Well, I could not tell you exactly at the present time what course we were steering at that time.

Q. You could not tell.

A. We were steering southeast by south five-eighths south, I think the course was, on the "Flyer"; that was the "Flyer's" course from Pully Point—or from Alki Point to Pully I think, I would not be sure.

Q. Do you have to, on that course from Alki to Pully, change your course at all, in the ordinary course of events, to go around Robinson?

A. We do. Yes, we have to haul to starboard about—I think about a quarter of a point, from Pully Point to Robinson Point, to get clear of Robinson.

Q. And you say you changed your course a quarter of a point before you got to Pully?

A. Before—we changed it to go by the "Virginian".

Q. A quarter of a point?

A. Yes, or more maybe, as far as I know; I would not exactly say that.

Q. But it is your best recollection now that you changed it about a quarter of a point?

A. Changed it between a quarter and half a point, we hauled to clear him. You see we were right on his track, you see.

Q. Coming right after him?

A. Right by him. Of course it might take a quarter, maybe a little more, to get clear of him.

Q. You don't know how much you did pull off?

A. No, I don't know, but I don't think we pulled off over a half a point, anyway, at the most.

Q. And you think you passed—got by the "Virginian" when you were opposite Pully Point?

A. Yes, about there.

Q. And where was the "Indianapolis"?

A. Well, she was just—now, if I recollect, I think we had just gone by it about a minute or something of that kind.

Q. Yes, that is what I was trying to find out.

A. I think we had gone by Pully just a little.

Q. You had gone by Pully just a little or went by the "Virginian" just a little before she got to Pully?

A. It was either one way or the other, now, I could not say for sure which way; either one side or the other; we were close to Pully Point, just pretty close.

Q. Where was the "Indianapolis" when you passed the "Virginian"?

A. She was a little later than usual, I think. I don't think we passed her at the same time. If my mind—I don't think she was down there as close that time, I don't think the "Indianapolis" was kind of inside at the time—or she was inside of us, that is right, that is right, she was inside of all of us, I remember now. I think she was inside of the whole works.

Q. Where do you usually change your course to go to Robinson? A. Right off of Pully.

Q. And why didn't you change it right off of Pully this night?

A. We didn't change off of Pully on account of this other ship, the "Virginian" and the "Strathalbyn", coming in sight.

Q. Did you see the "Strathalbyn"—is that one of the reasons you didn't change your course?

A. Yes sir.

Q. And if you hadn't seen the "Strathalbyn" you would have changed your course? A. Yes sir.

Q. And you would change it about off Pully, would you? A. We would change it off of Pully, yes.

Q. Now, about where did you pass the "Strathalbyn", that is, how far over from Pully Point toward Robinson Point, about half way or something of that kind?

A. No, we was not that far, we was not quite half way; I would not judge we were over two miles the other side of Pully.

Q. You think you were about two miles the other side of Pully—

A. (Interrupting) Well, I would not exactly say that, either, but that is just my judgment.

Q. You passed her about two miles the other side of Pully—passed the "Strathalbyn"?

A. Yes, we ran a minute or two by Pully.

Q. And how long does it take you to run from Pully to Robinson on the "Flier"?

A. I think it takes about twelve minutes; I am not sure.

Q. And then you must have run about six minutes?

A. Well, somewhere between—maybe five or six minutes, probably, I would not say for sure.

Q. That is, you ran that up to the time you passed the "Strathalbyn"? A. Yes sir.

Q. You saw the "Strathalbyn's" headlight when you were about off Pully?

MR. BOGLE: I object to that. He didn't testify to that.

MR. HAYDEN: Well, I am asking him.

MR. BOGLE: Well, ask him if he did.

MR. HAYDEN: I did ask him.

MR. BOGLE: No, not in that form—I object to the form of the question.

Q. (Mr. Hayden) Go ahead, answer the question.

A. Well, at the time we were closer—we were the other side of Pully when the lights of the ship were reported at all, we were up to Pully Point.

Q. You were up to Pully Point?

A. Yes, up by it.

Q. Just passing the "Virginian"?

A. We passed the "Virginian" first. We passed her before I thought I heard anything about the "Strathalbyn" at all, we had passed her.

Q. How far past him had you gone?

A. Well, I would not think over two or three ship's lengths, I don't think.

Q. Then you heard the lookout report a white light?

A. Yes sir.

Q. Now, I understand you to say you thought you saw another white light besides the one that you heard reported? A. Well, no, I didn't.

Q. You didn't see any other white light?

A. Not as far as I know. I don't think I did. I might have seen another white—

Q. (Interrupting) Did you testify before the inspectors?

A. I saw—as I thought at the time I saw two lights, but I could not say for sure whether I saw them or not, now, at the present time.

Q. You just thought you did see them?

A. Of course we never do—inside of a closed window, on a dark night, you can't see anything outside very

well; but I am pretty sure I saw a white light.

Q. There was not any trouble in distinguishing this light that was seen, for a ship's light, was there?

A. No, I would not think so.

Q. You saw that light, did you, until you passed the "Strathalbyn"?

A. Well, I will tell you the way I saw it—

Q. Interrupting) I just asked you if you saw that until you passed the "Strathalbyn"?

A. I saw a light at one time, but didn't look to pay any more attention to it at all, I was steering a course.

Q. Were you steering a course?

A. I was steering a course, yes sir.

Q. You were keeping your eye on your compass more than you were on anything ahead?

A. Yes, more than on anything ahead. The light reported, of course, you would raise your eyes to look to see; that would be all there would be to it.

Q. So you were not watching this steamer anywhere near close at all?

A. No sir, not at all, I was not.

Q. So far as you observed you saw no red light on this steamer? A. No sir, no red light.

Q. Did you ever pass a steamer without seeing a red light or a green light, side lights?

A. Well, not very often, that is, if we were close enough. Of course if we were a mile or two off—

Q. (Interrupting) I mean when you pass them do you always notice whether they have a red light or green, or not? A. Yes, I always notice that, of course.

Q. You say you were on the "Comanche". That is one of Captain Green's boats, isn't it? A. Yes sir.

Q. And the "Flyer" is one of Captain Green's boats?

A. Yes sir. I have worked for that company for about—well, since I have been on Puget Sound.

Q. Did you testify before the United States Inspectors? A. Yes sir.

Q. When you had passed the "Strathalbyn", did you see how she appeared to be heading?

A. Well, she was—I could not exactly tell that, I

don't know how—she was heading south, of course, but I don't know what course.

Q. Did you hear her blow a whistle, when she was about opposite your bow, for the "Virginian"?

A. I think she did.

Q. Did you notice then how she was heading?

A. Well, we were abeam; I could not say.

Q. You could not say. So long as you saw this masthead light it was a steady light, was it?

A. Well, I took a glance with my eye at it and that is about all I would pay any more attention to.

Q. It looked like a steady light, did it?

MR. BOGLE: I object to that.

A. It looked like a steady light.

Q. I presume when you got back you looked more at the boats, didn't you?

A. Well, when we were right up on the side I could see her plainer.

Q. You were not steering in the boat's course coming back to them?

A. No, just going around, shashaing around there.

Q. And you made a turn to port?

A. We astarboard our helm.

Q. Astarboard your helm and came around to port?

A. Yes.

Q. Up here toward the Des Moines shore?

A. The Pully shore.

Q. You know where Des Moines is, don't you?

A. Des Moines is on—

Q. (Interrupting) The mainland? A. Yes.

Q. You turned then to the east—eastward?

A. We went to the eastward, yes sir.

Q. And you came up alongside the "Strathalbyn" first?

A. Well, I would not say sure which one we did come to first. Yes, we did.

Q. Now, how could you find where the "Strathalbyn" was? A. Well, we went to both of them.

Q. How could you tell where they were?

A. We could see them.

Q. What could you see? A. See a ship.

Q. What ship, what about the ship?

A. Well, we came over there right up close to her, we ran right up to her, to find out if she needed any assistance.

Q. How did you know where she was?

A. Well, we must have seen her or we could not have come over there.

Q. And then I want to know what you saw.

A. Well, I saw a green light when we came over.

Q. And did you see any other light that you remember now?

A. Well, I was not paying much attention, sir, as we were running around—

Q. (Interrupting) See the outline of the ship?

A. I could see the outline of the ship, yes, because we were right up close to her.

Q. And could you see the “Virginian”?

A. I could when we got up to her.

Q. Could you see her before you got up to her?

A. Yes, I think we could.

Q. You could see her lights when you turned, couldn't you?

A. In the pilot house, movements like that, of course it was my business to attend to the wheel and the compass, and outside of that I was not paying much attention. Of course the captain gave me the course I was steering, as he gave them to me, “port,” “starboard” and “steady” and that way, and I was doing as he told me. As far as my seeing the ships, I don't pay much attention to them.

Q. When you first noticed the light on the “Strathalbyn”, did you notice where Pully Point was?

A. We were by, I think, we were by Pully Point.

Q. Did you notice where Robinson Point was?

A. Yes sir, Robinson Point was—

Q. (Interrupting) Did you notice where the “Strathalbyn” was, fixing a position with respect to a line directly between you and Robinson Point light?

A. Well, I should think that her position would be coming kind of a little from Pully, the way I sized it at the time.

Q. Would it be to the east or to the west of a line

between your vessel, the "Flyer", when you first noticed the "Strahalbyn's" light, and Pully Point light?

A. Well, I think she was a little to the westward of Pully.

Q. A little to the westward of Pully?

A. I would not say. Yes.

Q. That is your best recollection at this time?

A. That is as near—I can't very well say this, you know, on account of being inside of the pilot house, I could not exactly say.

Q. Well, then, do you recollect about it, Mr. Crawley?

A. As we were coming from there, like she was coming like this and we would be coming like this (illustrating), like that way, the way I see it—a little more up, you know (illustrating); we would be coming like this, you see, up, that direction, in my judgment. (Illustrating.)

Q. Now, then, that seems to be the course that she was holding?

A. Yes, she didn't seem to change her course, as far as I could see. I didn't pay much attention to her changing her course, but I know we changed our course and held it until we went by her; how much I could not say.

Q. In the navigation of all steamboats you have ever been on, there is a tendency of the steamer to swing more or less, isn't there?

MR. BOGLE: I object to that as improper and immaterial.

A. Well, sometimes ships don't steer good or you can't always tell—

Q. (Interrupting) They don't run along on a straight line, do they, like a railroad train on the tracks?

A. There are ships that does, they don't vary a quarter of a point in ten miles—some ships.

Q. You mean you can set the wheel of the ship and let it stay there and she will run ten miles without changing a quarter of a point?

A. No, I mean a man is there, he can keep her on the course for ten miles without bringing her off at any time.

Q. You must have to play your wheel all the time to keep her steady?

A. To keep her steady. If she is a very little off at any time—

Q. (Interrupting) And no ships will run straight unless the wheel is handled to keep them so?

A. Well, there are some ships will run quite a ways without the wheel being moved at all.

Q. Yes, a little ways, but that does not amount to much in any practical navigation, does it?

A. No, a man is not supposed to leave the wheel and go away from it at any time; there is always a man there, it don't make any difference how good they steer.

Q. And the man stands at the wheel and when he sees the ship commence to swing either one way or the other, then he moves the wheel to counteract it?

A. Yes sir.

Q. So that the ship swings, as a matter of fact, before the wheel is moved?

A. Well, she does not get a chance to swing very much—

Q. (Interrupting) But she starts to swing, she moves some? A. She might move a little.

Q. And it is that movement that calls the attention of the helmsman to the fact that he has to move his wheel to check it? A. Yes sir.

Q. Did you go up to the "Strathalbyn" after you made your swing around and after the collision, abaft her beam or forward of her beam?

A. Well, that I could not say, sir.

Q. You were forward of her beam somewhat when you saw her green light?

A. Saw her green light, coming right abeam of her.

Q. Right abeam of her?

A. We were heading right onto her when I saw her light; that is the only time I did see it—right onto her green light.

Q. Then you went around the stern of her?

A. I would not say which way we did come around; I don't remember; I didn't pay much attention to it.

Q. Do you remember seeing the masthead light when you came up to her after the collision?

A. No, I don't. I don't remember about—any attention to it.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Mr. Crawley, do you have any difficulty in keeping a vessel on a course if there is a man at the wheel?

A. Very little, unless you are in strong tide-rips or something of that kind, you might swing a little.

Q. Any strong tide-rips between Pully and Robinson Points? A. No, not that I ever noticed.

Q. When you say the "Indianapolis" was inside of the boats, do you mean he was over towards Vashon Island or in—

A. (Interrupting) She was nearer Pully. As near as I can judge, I think the "Indian" was around there in that direction, I think, afterwards; I am not sure whether it was afterwards or before, I could not say at the present time.

Q. What do you mean by inside of the boats, do you mean in toward the shore, mainland?

A. Closer to Pully Point, that is, as she—

Q. (Interrupting) Well, I just wanted to get which side you meant.

A. Yes, at Pully Point. As near as I could judge, that night I think she passed closer in, and I think she passed ahead of these ships, before we met those boats.

Q. I understood you to say on cross examination that you usually changed your course at Pully?

A. We do, yes.

Q. But you didn't do it this night on account of the "Strathalbyn"?

A. We didn't do it this night on account of the "Strathalbyn".

Q. Didn't you change your course at all in the vicinity of Pully?

A. We hauled off clear of the "Virginian" and kept that course.

Q. You did not pull back—

A. (Interrupting) We didn't come back for Robinson until after these ships had been clear and gone.

(Witness excused.)

HARRY ASHURST, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name?

A. Harry Ashurst.

Q. What is your business or occupation?

A. I am deck-boy on the "H. B. Kennedy".

Q. How long have you been a sailor or deck-hand, following the sea?

A. Well, I have been following the sea pretty near all my life; since I left school.

Q. Approximately how many years is that?

A. Seven years.

Q. Were you on the steamer "Flyer" on the night of January 12, at the time the "Virginian" and "Strathalbyn" were in collision? A. Yes sir.

Q. In what capacity? A. I was lookout.

Q. When did you go on the lookout?

A. At seven o'clock.

Q. The vessel then was on what voyage?

A. Running from Seattle to Tacoma.

Q. Do you remember passing the "Virginian" in the vicinity of Pully Point? A. Yes sir.

Q. In approaching Pully Point, how was your vessel running in respect to the "Virginian"?

A. Well, the "Virginian" was ahead of us and a little to the starboard.

Q. A little to your starboard? A. Yes.

Q. Were you coming up under her stern?

A. Yes sir.

Q. Now, in passing her, what manoeuvres did you make?

A. Well, we—from what I could judge, we went to the starboard.

Q. You went off to her starboard, did you?

A. Yes sir.

Q. Did you give her any passing whistle?

A. Yes sir.

Q. What whistle was that? A. One whistle.

Q. Did the "Virginian" answer that whistle?

A. Yes sir.

Q. From where you were standing on the lookout, can you tell whether or not your vessel—what course she is on or what changes she makes?

A. Yes, I can tell when—whether the boat is going straight ahead or whether she is veering off.

Q. Did she change her course any to pass the “Virginian”? A. Yes sir.

Q. Now, after passing the “Virginian”, did you see any other vessel—a light on any other vessel this night and report it? A. Yes sir.

Q. What light was that and when did you see it—first see it?

A. Well, when we passed the “Virginian”, I reported a light about—I saw a light approaching about a mile away, I guess.

Q. And how far did you pass off the “Virginian”, off her starboard side?

A. Oh, I should say about 300 feet.

Q. And had you passed the “Virginian” when you saw this light ahead? A. Yes sir.

Q. You judge it was about a mile away?

A. Yes sir.

Q. And where was that light, how did that light bear from you, straight ahead, off your starboard or off your port?

MR. HAYDEN: Let him answer where it bore.

Q. (Mr. Bogle) Was it straight ahead, off your starboard or off your port bow?

A. When I reported it, it was straight ahead, sir.

Q. And about a mile distant? A. Yes sir.

Q. At that time what lights did you see, Mr. As-hurst?

A. I saw a masthead light and a range light. I reported white lights.

Q. You saw two white lights? A. Yes sir.

Q. Now, where were you standing on the “Flyer”, on the lookout? A. On the bow, sir.

Q. At the extreme forward part of the ship?

A. Yes sir.

Q. No obstructions in your way, were there?

A. No sir.

Q. And in looking at these lights, did you have to look up or look down to see them; in other words, were they higher than you were?

A. Yes sir, they was higher than me; I was looking at it at an angle like that. (Illustrating.)

Q. Did you see any other lights on her at that time?

A. No sir, I did not. I just saw the white lights—the two white lights.

Q. Did you report those lights just as soon as you saw them? A. Yes sir.

Q. Now, did this other vessel afterwards give you any passing whistle?

A. The “Strathalbyn”?

Q. Yes. A. Yes sir, she blew one whistle.

Q. Did your vessel answer that? A. Yes sir.

Q. And how long was that after you had reported the lights?

A. Well, it seemed about a half a minute—just somewhere about a half a minute, I think.

Q. And how did these lights bear from your vessel at that time?

A. Well, we was veering off all the time.

Q. Veering off in which direction?

A. To out-board like—to the starboard.

Q. Did you notice how your course was with reference to Robinson light?

A. Yes sir, we was—we was not on our regular course, I could see that.

Q. Were you more to the east or more to the west than your regular course?

A. Well, we were going to—veering to the starboard all the time.

Q. To your starboard? A. Yes sir.

Q. How far did you pass off the “Strathalbyn”?

A. Well—oh, I should say about 400 feet.

Q. Could you see her port light at that time?

A. No sir.

Q. Did you at any time prior to the collision see either her starboard green light or her port red light?

A. No sir. No, I didn't, or else I would have reported it.

Q. You did not report any side lights?

A. No sir. Just the white lights.

Q. Do you report side lights when you see them?

A. Yes sir.

Q. Were you looking for side lights this night on this vessel?

A. Well, I was not exactly looking for them, but if I had of seen them I would have reported them.

Q. Was your duty as a lookout to look for lights and report them? A. Yes sir.

Q. As you were approaching the "Strathalbyn", was your course parallel or were you spreading away or getting closer to her?

A. We was getting away from her.

Q. From where you were standing in the extreme forward part of the vessel, can you tell exactly how a light bears from the course of your vessel—from the course your vessel is taking? A. Our light—

Q. (Interrupting) I say, from where you are standing in the extreme forward part of a ship, can you tell exactly how a light bears from the course of your vessel; in other words, can you tell whether a light is directly ahead or off either bow? A. Yes sir.

Q. And as you approached this vessel, did her lights remain directly ahead or did they get off on one or the other bow?

A. No, as we approached them—well, you see they was going at an angle all the time, because we was going like we were going that way (illustrating) all the time.

Q. Spreading? A. Spread.

Q. Spreading away, you mean?

A. Yes sir, we were spreading away from her, and that would put the lights on a different angle all the time.

Q. Could you tell what the course of the "Strathalbyn" was?

A. No sir, I could not exactly tell you what the exact course, but she seemed to be—you know—going from Robinson Point to Pully Point.

Q. How could you tell that, from her masthead and range lights? A. Yes sir.

Q. Were you, after the collision on this night, or at

any time during this night, in a position where you could see the port light on the port side of her?

A. Yes sir.

Q. After the collision?

A. Oh, after the collision? Well, I could not say about that—not after the collision.

Q. How did you say this light bore from your vessel when you first saw it and reported it?

A. Well, I reported that there was a light ahead—a white light ahead, that she was just—just a little off our port bow, just a little, that was all; it was not much.

Q. Did you hear the “Strathalbyn” whistle when she was about off of your bow or abeam of you, give a second whistle? A. Yes sir, I heard her.

Q. Where was she when she gave that second whistle, if you remember?

A. Well, she was almost abeam of us.

Q. Did you hear any other whistles after that?

A. Yes sir.

Q. What other whistles did you hear?

A. Well, I heard about three or four short blasts.

Q. How long was that after this, as near as you can remember? I realize it is a long time since this collision.

A. What, after he blew the first whistle?

Q. No, after he had passed you and blown one whistle when about your beam?

A. Well, he blew one whistle when he was almost abeam of us and then I guess it would be—let’s see, it would be only a few seconds, I guess, about twenty or thirty seconds, then he started, I heard a lot of short blasts then.

Q. That is the best of your recollection now, is it?

A. Yes sir.

Q. Did you hear her give any other passing whistle from the time she was abeam of you, prior to the time these short blasts were given?

A. No sir, I heard—I only heard the whistle that he gave when he was just about abeam of us.

Q. Was that the last whistle you heard before the short blasts? A. Yes sir.

Q. Did you hear any other whistles after the short blasts?

A. Yes, I heard some more of the blasts blowing.

Q. How long were those after the first of the blasts until the second short blasts?

A. Oh, it was almost directly after.

CROSS EXAMINATION.

Q. (Mr. Hayden) You are on the steamer "Kennedy" now? A. Yes sir.

Q. That is one of Josh Green's boats, isn't it?

A. No sir, I think it is owned by Mr. Kennedy.

Q. Who? A. Mr. Kennedy.

Q. You were working for Josh Green at the time of this accident, were you not? A. Yes sir.

Q. And you remember very distinctly having seen two lights on the "Strathalbyn"? A. Yes sir.

Q. The reason you say that you did not see the red light or green light as you were approaching the "Strathalbyn" was because you didn't report it?

MR. BOGLE: I object to that. That is not what he said?

Q. (Mr. Hayden) Is that it?

MR. BOGLE: He testified, positively, that he did not see it.

Q. (Mr. Hayden) Is that it?

A. No, I didn't see no—

MR. HAYDEN: (Interrupting) I object to—I just want to put in my objection to these attempted educational objections of the attorney to his witness.

MR. BOGLE: I am putting them in entirely—

MR. HAYDEN: (Interrupting) I am asking questions here. He can say "Yes" or "No" to them. I have that right, I think, under cross examination, without interruption.

MR. BOGLE: You are misquoting his original testimony, is the reason I objected.

Q. (Mr. Hayden) Now, as I recollect your testimony, you said that you did not remember seeing either a red or a green light on the "Strathalbyn"?

A. That is right.

Q. Is that so? A. I did not see them, no—

Q. (Interrupting) You also said, if I remember—

MR. BOGLE: (Interrupting) Let him answer that. You answer the question.

MR. HAYDEN: He answered it.

MR. BOGLE: Answer the question.

MR. HAYDEN: He did answer it.

MR. BOGLE: Yes, you shut him off when he was going to finish it.

(Question and answer read.)

Q. (Mr. Hayden) I understood you to say that it was your custom to report the lights, whether you saw a red light or a green light or a masthead light?

A. Yes sir.

Q. Is it your custom to do that after you have reported the steamer's lights, do you report every light that makes its appearance on the same seamer? In other words, if you first see the steamer's red light you report a red light, don't you? A. Yes sir.

Q. And then if you first see a green light, you report a green light, don't you? A. Yes sir.

Q. And if you see a masthead light you report a masthead light, don't you, or a white light?

A. We don't exactly say a masthead light.

Q. What do you say? A. A white light.

Q. A white light? A. Yes.

Q. After you have reported those lights, you don't keep on reporting every change of light, do you?

A. No sir.

Q. That is what I thought. Now, you estimate, if I remember correctly, that you saw the "Strathalbyn's" white light at least a mile off? A. Yes sir.

Q. And reported it while it was a mile off?

A. Yes sir.

Q. And reported it when it was a mile off?

A. Yes sir, I reported it as soon as I could see it.

Q. Do you remember some young man on the bow of the "Strathalbyn", talking to you that night about this time—I mean on the bow of the "Flyer", talking to you about this time that you saw the white light? A. No sir.

Q. Did you have any conversation with any young men at all on the bow of the "Flyer" after you had seen the "Strathalbyn's" white light and before she passed you? A. No sir.

Q. After the "Flyer" had passed the "Virginian" she kept a straight course, didn't she? A. No sir.

Q. Did she veer first to the starboard and then to port? A. No sir, she veered to starboard.

Q. Did she keep turning to starboard all the time?

A. From what I can judge, for quite a ways she did.

Q. Kept turning off all the time to starboard?

A. Yes sir.

Q. Do you remember seeing Pully Point light after the "Flyer" had passed the "Virginian"?

A. No sir, I don't recollect looking for it at all.

Q. You don't remember seeing it, do you?

A. Well, I don't remember seeing it, but I never looked for it.

Q. Do you report Pully Point light when you see it?

A. No sir.

Q. You don't report the red light when you see it ahead, then?

MR. BOGLE: Oh, I object to that.

Q. (Mr. Hayden) Is that it? On that run from Pully Point to Robinson Point, you don't report a red light when you see it ahead; is that it?

MR. BOGLE: I object to that. He has not testified to that.

MR. HAYDEN: You heard me ask him the question, didn't you?

A. If I see a red light I report one.

Q. (Mr. Hayden) Don't you see the Robinson Point light when you are on that run?

MR. BOGLE: You have been asking about Pully Point light; that is the one he said he didn't see.

MR. HAYDEN: Oh, I beg your pardon then.

Q. (Mr. Hayden) I ask you now if you reported the Robinson light that night? A. No sir.

Q. Did you see the Robinson Point that night when you were between Pully Point and Robinson Point?

A. Yes sir, I seen Robinson Point.

Q. How soon did you see that light that night, how far had you gone beyond Pully Point when you saw the Robinson Point light?

A. Well, I could see Robinson Point from Pully Point.

Q. Well, could you see it before you had passed the "Virginian"?

A. Well, I never—I didn't look for it; I guess I could if I had—

Q. (Interrupting) But you didn't see it, that is what I am asking you, if you actually saw it as a matter of fact? A. I saw Robinson Point light after—

Q. (Interrupting) Before you passed the "Virginian"?

MR. BOGLE: Go ahead, finish your answer.

Q. (Mr. Hayden) Before you passed the "Virginian", did you see Robinson Point light? That is the question I want answered—on this night?

A. I remember seeing Robinson Point light after we passed the "Virginian".

Q. Do you remember seeing it before you passed the "Virginian"?

A. I don't remember seeing it before we passed the "Virginian".

Q. Do you remember how the "Flyer" was heading with respect to Robinson Point light after you passed the "Virginian"—or put it this way: After you got by Pully Point, commencing with the time that you went by Pully Point?

A. Well, after we passed the "Virginian"—let's see—after we passed the "Virginian" the boat seemed to go on its usual—on its usual course; but then when the "Strathalbyn" came in sight then the boat went off the course then.

Q. Do you judge that because you were looking forward and had some object on shore—on the other shore to go by? A. Yes sir.

Q. Now, I want to see if I get this right, Mr. Ashurst. When you came up astern of the "Virginian", the "Flyer" veered off to starboard to pass her? A. Yes sir.

Q. That is right. Then when she had passed the "Virginian", she veered back to her regular course that she would take to Tacoma, for a while, until she saw the "Strathalbyn", and then she veered off again to starboard; is that right?

A. Yes sir, that is as near as I can recollect.

Q. Do you know how fast the "Flyer" was going that night? A. No sir, I don't know the exact—

Q. (Interrupting) She makes about fourteen and a half or fifteen knots, don't she? A. Yes.

Q. Now, you have mentioned time in here. Do you mean to be exact about the time, did you take any observations, from your watch or anything else, that night, so that you can tell whether when you say a half a minute it was actually thirty seconds?

A. Well, no sir, I had no watch at all.

Q. When you say the time between the time that you saw the "Strathalbyn" and reported her lights, up to the time that she gave you the passing whistle, was about a half a minute, do you mean to be exact about that time?

A. No sir, no exact, because I had no watch on me.

Q. And I suppose the same answer is true as to the time between the "Strathalbyn's" giving the one whistle to the "Virginian" and the danger signals?

A. Yes sir.

Q. If you had seen the red light on the "Strathalbyn" first you would have reported a red light, would you? A. Yes sir.

Q. If you had seen the green light on the "Strathalbyn" first, you would have reported a green light?

A. Yes sir.

Q. And if you had seen the masthead light on the "Strathalbyn" first you would have reported a white light; is that right? A. If I had seen it first.

Q. Yes, and you did see it first, you saw the masthead light on the "Strathalbyn" first, didn't you?

A. Yes.

Q. You reported a white light that night?

A. Yes sir.

Q. And you reported it was right ahead, did you?

A. Yes sir.

Q. Now then, you would not report the red light on the "Strathalbyn", or any other vessel, if it appeared after you reported the white light to the captain, would you?

A. Not unless he would have been coming dangerously near.

Q. Yes. Well, of course the "Strathalbyn" didn't come dangerously near at any time, to you, did she?

A. Well, she would have done it if we hadn't of gone off.

Q. The captain was watching his business then and he went off—

MR. BOGLE: (Interrupting) I object to that. That is entirely immaterial. This man does not know what the captain was doing.

Q. (Mr. Hayden) You would judge the captain was watching his business, by the way the vessel was handled, wouldn't you?

MR. BOGLE: I object to that as immaterial. He does not know anything about what the captain did.

Q. (Mr. Hayden) Answer.

A. Well, from what I saw myself, the captain, he was getting out of the way of the approaching vessel.

Q. That is what he ought to do, isn't it?

MR. BOGLE: I object to that. This witness has not qualified as a navigation expert. He is testifying to the facts. You can put these little things on the record, if you think it will help you any.

Q. (Mr. Hayden) Did you watch this white light of the "Strathalbyn" very closely from the time you reported it until it passed you?

A. Well, I didn't watch it any closer than what I would watch any other boat; just ordinary.

Q. What is ordinary with you? When you are meeting a boat coming to you and you see her lights, what do you ordinarily do?

A. Well, I first make sure what lights they are.

Q. And what else do you do?

A. Then I report them.

Q. Then what else do you do? Do you pay any more attention to them at all?

A. Yes, I look at them now and again. I don't keep my eyes fastened on them, you know.

Q. You have got other things to do, in other words you have got to keep watching out for lights all the time, haven't you? A. Yes, sir.

Q. So after you once report a light, you don't pay so much attention to that light, but keep looking for some other light that might be coming out of the darkness somewhere? A. Yes, that is the rule.

Q. Did you see this light that you took to be the masthead light, and the range light, both at the same time?

A. Did I see them both at the same time?

Q. Yes, when you first picked up either of these lights, did you see them both? A. Yes, sir.

Q. Did you continue to see both of them from time to time until the "Strathalbyn" had passed the "Flyer"?

A. Yes, sir, I seen those lights.

Q. You say that the "Strathalbyn" kept coming along apparently crossing your course, so that you had to keep veering the "Flyer" to starboard all the time to pass her; is that right?

MR. BOGLE: I object to that. He didn't say that. He didn't say she was crossing his course.

Q. (Mr. Hayden) Is that right?

A. She was not—when I reported her—when I reported the "Strathalbyn," she was almost—I reported her lights head-on, she was almost directly ahead of us, but if there was any it was just a little on the port, on the port bow.

Q. Yes.

A. Well, while she was coming along, and we was—then our boat went off this way.

Q. Went off to the starboard?

A. To the starboard.

Q. And how did the "Strathalbyn" keep coming?

A. Well, the "Strathalbyn," she was—she seemed to be coming just the same.

Q. Yes. Did you have to keep on veering your boat off to the starboard all the time to pass her?

A. Yes, sir, from what I could see, the boat—when I was on the bow of the boat it was going off her course all the time.

Q. Was that because the "Strathalbyn's" course was different from the "Flyer's" course so that the "Strathalbyn," if she continued on her course, was getting across the course of the "Flyer"?

A. No, the "Strathalbyn" was coming right—she was almost on the "Flyer's" course; she was not crossing the course, she seemed to be head-on, sec. The "Flyer" was going this way (illustrating) and the "Strathalbyn"

was coming almost in a direct line, but, as I say, if it was any it was a little off to port—the “Strathalbyn”—just a little, if there was any.

Q. So all that the “Flyer” veered her course at all was enough to go 400 feet off the “Strathalbyn”?

MR. BOGLE: I don’t think the witness has said that.

A. Yes.

Q. (Mr. Hayden) That is what I am asking you.

A. When we got abreast of the “Strathalbyn,” from what I can judge from the—the distance would be about 400 feet.

Q. So that if the “Strathalbyn’s” course and the “Flyer’s” course were the same, except in opposite directions, and the “Strathalbyn” held her course, the “Flyer” only veered off enough to go 400 feet to the port of the—that is so that the “Strathalbyn” was 400 feet on the “Flyer’s” port side? A. Yes.

Q. And you think that now, you say, you saw those lights or just the masthead light and the range light about a mile off?

A. Yes, sir, they was a mile when I reported them.

Q. And the “Flyer” started to make this veering of her course at the time you reported the lights?

A. Just about the time, yes, sir.

Q. As I understand you, you say that during all the time the “Strathalbyn” was approaching you, you saw neither her green light nor her red light?

A. No, sir.

Q. That is the best recollection you have got on it at this time, is it? A. Yes, sir.

Q. Did you see any other lights on the “Strathalbyn” at all, except the masthead and this range light, that you have got any recollection of now, did you see any lights in her cabins or port holes or anything of that kind?

A. Well, I have no recollection of that; I would not take much notice, even if I did—about the lights in the port holes.

Q. Did you take any notice whether you could see the outline of the “Strathalbyn” as you were approaching her? A. Yes, sir.

Q. Saw her on the water?

A. I could see her on the water.

Q. Could you see the loom of her for quite a little distance? A. Yes, sir.

Q. Could you see that while she was ahead of you?

A. Yes, sir.

Q. About how far do you think you could see the loom of her?

A. Well, it was pretty—the night, it was rather clear, I guess I could see the loom of her 400 feet away, I guess, because I remember seeing the loom of her when she passed us.

Q. Yes? A. And that was quite a ways off.

Q. Do you remember seeing the loom of her before she passed you, while she was coming up to you?

A. No, I do not remember.

Q. You might have seen it, but you didn't pay any attention to it?

A. I didn't pay any attention to that.

Q. You never expected to be asked any questions about it at that time, did you?

MR. BOGLE: I object to that as immaterial.

A. No, sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Mr. Ashurst, is your recollection very clear as to whether or not you saw the loom of this ship, the "Strathalbyn," when you were abeam of her?

A. Yes, sir, I remember seeing the loom of the "Strathalbyn" when she was abeam of us.

Q. What do you mean by the "loom," what did you see? A. Well, the boat itself.

Q. You mean you saw the whole of her—could you see her hull? A. Yes, sir, I saw the boat.

Q. Was the "Strathalbyn" higher out of the water than the "Flyer"?

MR. HAYDEN: I object to this as immaterial and cross-examining his own witness.

(Question read.)

Q. (Mr. Bogle) If you could tell when you passed her, that is what I am getting at?

A. Well, I don't know whether she was any higher

out of the water or not, but she was a bigger boat, I could see that.

Q. She was a bigger boat? A. Yes.

Q. Were all of the "Flyer's" cabin lights lit at this time? A. Sir?

Q. Were all the "Flyer's" cabin lights lit when you passed the "Strathalbyn"?

A. Well, I don't know about the "Flyer's" cabin lights. You see I didn't make notes on that, I was right on the bow.

Q. You don't know the lights in the passenger cabins were lit, or not, do you?

(No response.)

Q. Do they ordinarily keep those lights lit on the voyage between Seattle and Tacoma—lights in the passenger cabins? A. Inside.

Q. That is what I mean, inside. A. Yes, sir.

Q. In testifying about seeing the masthead and range lights, what did you see, did you identify them as masthead and range lights, or did you see two white lights?

MR. HAYDEN: I object to it as leading, and I object to it on the ground that it is cross-examining his own witness.

A. Oh, I seen—I saw the two white lights, but I knew what they were.

Q. (Mr. Bogle) You took them to be a masthead and range light, did you? A. Yes, sir.

Q. And when you saw this white light, what did you report?

MR. HAYDEN: I object to that as already been gone over in his direct examination, and he has been cross-examined on it.

Q. (Mr. Bogle) In what words did you report that?

A. I said, "There is a white light ahead, sir."

Q. Now, Mr. Ashurst, were you at that time looking for side lights?

MR. HAYDEN: I object to that as not proper re-direct examination.

A. Well, if they had been—if I had seen them I would have reported them.

Q. If you had seen them after you had reported the masthead light slightly off your port bow or directly ahead, either one of the side lights, would you have reported it?

MR. HAYDEN: I object to that. The witness has been asked that identical question and he said that he would not.

MR. BOGLE: In the form that you put it, he said he would not. I want to see whether he understands it, or not.

MR. HAYDEN: You can have the witness contradict himself, if you want him to.

MR. BOGLE: I am not trying to get him to contradict himself.

A. Now look: If I had seen—as I said, when I seen the masthead light and the range light, I reported them lights. Now, if that—if I had seen a red light, I would not have reported it—not unless it was dangerously near.

Q. (Mr. Bogle) Well, as a matter of fact, Mr. Ashurst, did you see a red or a green light as you were approaching the "Strathalbyn"? A. No, sir.

Q. Did you see a red light when you were abeam of the "Strathalbyn"? A. No, sir.

Q. You have testified that your testimony as to time here was merely approximate, to the best of your recollection at this time? A. Yes, sir.

Q. Does that apply also to your testimony as to distances?

A. Yes, sir, I could not give you the exact—it is only a matter of forming it up.

Q. Well, I say, to the best of your recollection now?

A. Yes, sir.

Q. From where you were standing on the bow of the vessel, could you tell any change in her course—the bow of the "Flyer"?

MR. HAYDEN: I object to that. He testified about that fully.

Q. (Mr. Bogle) Could you tell whenever her course was changed? A. Yes, sir.

Q. Now, you say she changed her course to star-

board to pass the "Virginian," and then she straightened back on her course for Robinson?

A. Yes, sir, she seemed to go on her own course again after we passed the "Virginian."

Q. How long was she on that course which she took to pass the "Virginian" before she changed back on her course for Robinson?

A. Well, to the best of my recollection he seemed to be on about five minutes.

Q. On his course that he took to pass the "Virginian"?

MR. HAYDEN: That is not what he said.

MR. BOGLE: That is what I asked him.

A. When he passed the——

Q. (Mr. Bogle) You said he changed his course to starboard to pass the "Virginian"? A. Yes, sir.

Q. And that afterwards he changed his course back onto his regular course?

A. Yes, that is the way it looked to me.

Q. How long was he on that course which he took to pass the "Virginian" before he changed back on his regular course?

A. Oh, well, he seemed to go back onto his course again as soon as we passed the "Virginian."

Q. And he ran on that course, you say, until you reported the lights of the "Strathalbyn"?

A. That is the way it looked to me.

Q. How long was he running on that course before you reported the lights of the "Strathalbyn"?

A. Well, seemed to be about five minutes, it seemed to me to be about five minutes.

Q. That he was running on his regular course?

A. Yes, sir.

Q. Before you reported the lights of the "Strathalbyn"? A. Yes.

Q. Well, how far were you past the "Virginian" when you reported the "Strathalbyn's" lights?

A. About—I guess we had passed the "Virginian" for nearly five minutes.

Q. Before you saw the "Strathalbyn's" lights at all? A. Before I reported them, yes, sir.

Q. At that time the "Strathalbyn" was about a mile away, was she?

A. Yes, sir, she seemed to be about a mile away.

Q. And then you changed your course, made off more to starboard, did you?

A. Yes, sir, that is what I can see, that is the way it looked to me. I stood on the bow and I could see we was—I could see what he was going.

Q. And you kept on that course, did you, until he passed the "Strathalbyn"?

MR. HAYDEN: I think this has been gone into about enough on re-direct. I object to it on the ground that it has all been gone into and not proper re-direct.

Q. (Mr. Bogle) I say, did he stay on that course, bearing to the starboard, until after he had passed the "Strathalbyn"?

A. Yes, sir, until he got out—yes, until after we passed the "Strathalbyn."

Q. And he started on that course bearing to starboard, you say, when he was about a mile away from the "Strathalbyn"?

MR. HAYDEN: I object to that.

A. Yes, sir.

MR. HAYDEN: That is what he said. What is the use going all over it again?

MR. BOGLE: Well, I will go over it. You can get your objection in.

Q. (Mr. Bogle) Now, Mr. Ashurst, do you know, as a matter of fact, whether he changed his course or what changes in course he made?

MR. HAYDEN: I object to that. The witness has just testified what he knows about the change in the course. It is not proper re-direct examination.

Q. (Mr. Bogle) Is that the way it appeared to you?

A. Well, he seemed to change the course, from what I could see, about—he started about a mile before we got to the "Strathalbyn," he started to veer off to starboard.

Q. Would the man at the wheel know more about the changes in course than you would?

MR. HAYDEN: I object to that as immaterial and not proper re-direct examination.

A. Yes, sir.

Q. (Mr. Bogle) Were there any young men up on the bow of the "Flyer" in the vicinity of where you were standing, talking to you?

A. There was no one talked to me at all.

(Witness excused.)

(Filed May 26, 1914.)

CLARK W. SPRAGUE, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name, captain?

A. Clark W. Sprague.

Q. How old are you, captain? A. Fifty-five.

Q. Where do you reside,—in Seattle, do you?

A. That is my home at the present time, yes, sir.

Q. What is your business? A. Steamboat man.

Q. How long have you been in that business?

A. I am ashamed to say. Thirty-five years.

Q. Do you hold master's papers? A. Yes, sir.

Q. How long have you held master's papers?

A. Twenty-nine years, continuous.

Q. Do you hold pilot papers for the inland waters of Puget Sound? A. Yes, sir.

Q. How long have you held those papers, captain?

A. Eighteen years, without any intermission.

Q. At the present time are you engaged in the business of a pilot? A. Yes, sir.

Q. What lines do you act as pilot for?

A. Well, the regular line is the Nippon Yusen Kaisha, Japanese Steamship Company, connected with the Great Northern Railway.

Q. Do you pilot any other vessels?

A. Whenever my time permits and the opportunity offers.

Q. Where do you pilot these vessels to and from?

A. The regular line?

Q. Yes.

A. From Victoria here and around various ports in the Sound, for cargo, and back to Victoria.

Q. During such times you are in charge of the navigation of the vessels, are you?

A. To a great degree, yes, sir. I always bear in mind the captain is supreme on a ship.

Q. I mean as to the local or inland navigation?

A. Yes.

Q. You have charge of the navigation of the ship?

A. Yes, sir.

MR. HAYDEN: Let him testify, please; don't tell him what he has got to say here.

MR. BOGLE: Surely you have no objection to a question of this kind.

MR. HAYDEN: I have an objection to your telling him what his duties are. Let him testify to what they are.

Q. (Mr. Bogle) What are your duties as a pilot on the inland waters?

A. Pilot. Direct the course of the vessel from point to point or port to port.

Q. Captain, I want to ask you a hypothetical question, as an expert navigator: Supposing that a vessel called the "Virginian," while on a voyage from Seattle to Tacoma, with a small amount of cargo, approximately 2,000 tons—and her full capacity is 12,000 tons—was in charge of a licensed pilot, a master and third officer, and while proceeding on such a voyage with the licensed pilot on the bridge and the third officer on the bridge and the lookout in the extreme forward part of the ship, she should pass Pully Point about three-quarters of a mile off, and that while off Pully Point she in turn is passed by another vessel called the "Flyer," being a small Sound vessel, which comes up under her stern and passes over to her starboard side, gives her a passing whistle of one blast, which she answers, and proceeds on ahead of the vessel called the "Virginian," having greater speed, and that when somewhere from three to 400 feet or such a matter ahead of the "Virginian" and off the "Virginian's" starboard bow, say a point and a half, that the officers in charge of the "Virginian" hear a single blast of a whistle at some point ahead, which is

answered by a similar whistle by the "Flyer," and that at this time the vessel called the "Virginian" is on a course approximately southeast by half south so as to pass clear of Robinson, and that upon hearing this single blast from ahead, which was answered by the "Flyer," the licensed pilot and third officer endeavor to pick up some object ahead, keeping a careful lookout, but are unable to see any object ahead from which this whistle has been blown, and that the lookout has not reported any light or any vessel ahead, and that approximately two minutes after this first whistle is given, which is answered by the "Flyer," during which time the officers are keeping such lookout and have been unable to see any light or any object ahead, another single blast of a whistle is heard at some point ahead; what would you say, as an expert navigator, would have been the duty of the officers in charge of the steamer called the "Virginian," under such circumstances, with reference to navigating their vessel?

MR. HAYDEN: I wish to object to the question on the ground that it does not fairly state the evidence in the case.

A. Had I been on the "Virginian," in conditions that are given to me here, the first whistle coming from an unknown origin——

MR. HAYDEN (Interrupting) Just a half a minute, please. I don't think that you have got to make this a personal matter, captain. You are asked a hypothetical question and not what you would have done, but what proper navigation should have called for.

A. Well——

Q. (Mr. Bogle) I take it what you would have done is what proper navigation would have called for.

A. I was leading up to that. Maybe I was wrong in putting myself on the "Virginian's" deck. Say any vessel, if I was in that position, a sound of a vessel originating from an unknown source, the first would put me on the alert; if a second blast from a second source of origin unknown, I think I would have stopped my ship, killed her way. I would not change the course of the ship; I could not talk to that that I didn't know the existence of; I would have to hold my ship killed and wait

for further development. It would take some guiding feature to make me change from that proceeding.

Q. (Mr. Bogle) Say, captain, that after this second whistle had been heard, being the first whistle after the whistle which had been blown to and answered by the "Flyer," that the pilot and third officer of the "Virginian," with the aid of the naked eye and with the aid of the night glasses continued to use every effort to pick up some object ahead; that the lookout had not up to this time reported any object or any lights; after consuming a short space of time in making further observations, then what would have been the proper navigation on board this vessel, provided her engines had been stopped at the first whistle to her—which she took to be to her?

MR. HAYDEN: Same objection.

A. Well, I as near as possible would kill her way and stop, stand, hold my position. I might have to manipulate with my engines to hold my head, but I would be very careful—very eager to get that result.

Q. And in getting that result of killing your headway, what would you do, captain

A. I would have to wait until the developments occurred to guide me——

Q. (Interrupting) No, I don't think you got the question. I said, in killing your headway, what would you do aboard the ship in order to do that?

A. I would wait for this unknown origin to declare its position.

Q. I don't think you have got it yet, captain. I mean, what would you do in reference to your engines in order to clear your headway?

A. Full speed astern until the back water came up under the bridge, and then the ship is dead.

Q. And after that what would you do, captain?

A. Let her set; be governed by future conditions.

Q. Would you consider that it would have been proper for you to have in any way changed your course after hearing this whistle? A. No.

Q. Not being able to see any lights?

A. No. If I am the man that his conversation is directed towards, he blows one whistle, he must know or

announce that he has the condition under control.

Q. What would the evidence indicate to you, that he was blowing to you?

A. I don't know that—there is nothing that would indicate it, only that I am getting in close proximity to some craft, at least the sound of the whistle would indicate that, and I stop my vessel, kill her, absolutely stop her, until something is put before my vision that would govern my action.

Q. Would the fact that this other vessel had blown you one or more passing whistles indicate to you that she could or could not see you?

A. How do I know that he blew to me? I don't know that. I am in ignorance. The only knowledge that I have got is that I am in close proximity to some vessel. Ordinary caution would bring my vessel to a full stop.

Q. Now, captain, take another position and say that a vessel, called the "Strathalbyn," heavily loaded with a heavy cargo of lumber, a deck load on the forward deck and a deck load on her after deck, while on a voyage from the port of Tacoma—I should have said, in both these questions, captain, that it was—take the position that it was after dark; in saying that no lights were seen, of course you would have to assume that.

A. Yes.

Q. That it was after dark, along about between seven and eight o'clock, in the month of January. Say that you were on a vessel called the "Strathalbyn," loaded as I have stated, with a slight list of about six degrees to the starboard, making approximately six knots an hour, on a voyage from Tacoma up the Straits, bound for Australia; that she rounded Robinson Point about a quarter of a mile off, somewhere between 7:30 and 7:40 p. m., on a clear dark night, overcast; that upon rounding Robinson Point the officers in charge of the "Strathalbyn" saw the lights of two steamers, apparently abreast of Pully Point, ahead of him; that they saw and noticed the ship on the inside, which afterwards turned out to be the steamer "Flyer," disappear—the lights disappear and then she reappeared on the other or starboard side of the other vessel, whose lights they had

seen, which afterwards turned out to be the "Virginian," and gradually drew ahead of such other vessel, the "Virginian"; that when the ship called the "Flyer" was approximately a quarter to a half a mile ahead and from a quarter to three-quarters of a point off of the "Strathalbyn's" port bow, or some such distance slightly off of her port bow, that the officers on the "Strathalbyn" blew to the "Flyer" one blast of her whistle, which was answered by the "Flyer." Well, going back for a minute: That when the officers on the "Strathalbyn" saw these two vessels abreast of Pully Point, that they heard the two vessels exchange passing whistles, one vessel and the other one answered; that at the time the ship called the "Strathalbyn" blew a single blast of passing whistle to the "Flyer," that the other ship, the "Virginian," was directly head-on to the "Strathalbyn," both of her side lights being visible and her range lights being in line; that the "Strathalbyn" proceeded on her course for approximately two minutes, until she was nearly abeam of the ship called the "Flyer," which she had blown to some two minutes before, and was from a quarter to a half a mile off, and that at this time the lights of the ship "Virginian" bore in the same way, showing that she was directly head-on to the "Strathalbyn," and that at this time, when the "Strathalbyn" was abeam of the "Flyer," that she gave one passing whistle to the "Virginian" and gave the order to port; that after giving this one whistle to the "Virginian," she waited and received no response. Under such circumstances, captain, what would have been the proper navigation on the part of the ship called the "Strathalbyn"?

MR. HAYDEN: Same objection.

A. I would port my helm hard over and probably stop my engines.

Q. Port your helm hard over and stop your engines?

A. I would. If I was in close waters that would not permit of a circle, I might back my engine full speed, which would have a tendency to expose greater than my helm alone would give; in going full speed astern with a single screw vessel, I would have more power applied to expose my port side.

Q. Say that the "Strathalbyn," after blowing the one whistle to the "Virginian" which was not answered, having ported, waited approximately one minute, during which time the "Virginian" bore the same, both of her side lights being visible and her range lights being in line, and that at this time the "Strathalbyn" gave her a second passing whistle of one blast——

A. (Interrupting) Yes.

Q. (Continuing) —which was not answered?

A. If I had come up to that,—I had not ported my helm hard over on the first blast, but on the second, when I saw there was no recognition of my whistle from the "Strathalbyn" to this approaching ship—on the second opportunity or necessity of blowing the passing whistle then I would put my helm hard over; I would not have done it in the first instance; I would have ported my helm a little, but not hard over. When I saw my approaching vessel didn't give way to me—didn't understand—if he did, he was not willing to comply—on the necessity of a second whistle then I would put my helm hard over.

Q. Well, say that at the second whistle to the "Virginian," which had not been answered, that the helm was steadied—ported and then steadied—that no response was received, and that then it was noticed that the red light on the "Virginian" was becoming dimmer and that her range lights were opening slightly——

A. (Interrupting) Yes.

Q. (Continuing) —what would you have done under such circumstances as that?

MR. HAYDEN: Same objection, and immaterial.

A. If I had my helm hard aport then I would, on the second whistle—the necessity of the second whistle, I would have gone full speed ahead, to have made this circle, and with all possible haste.

Q. (Mr. Bogle) After noticing such apparent change in the course of the "Virginian," would you have given her any signals?

MR. HAYDEN: Same objection.

A. From the "Strathalbyn"?

Q. (Mr. Bogle) Yes. A. Yes, I would.

Q. (Mr. Bogle) What signal would you have given her then?

A. I would have blown—the condition of my engines—three whistles and then probably followed it with four.

Q. What would the four whistles indicate?

A. Danger.

Q. Captain, where the "Strathalbyn" was then proceeding under a port helm and noticed the red light disappearing and the green light getting brighter and the range lights opening up, would that indicate that she was changing her course? A. That she was changing.

Q. The "Virginian" was changing? A. Yes, sir.

Q. In what direction?

A. Instead of passing me to port, a tendency to cross my bow, or at least fall into the course that I will take with the port helm.

Q. Would that indicate any danger to you if you had been on the "Strathalbyn"?

A. Yes, because he is coming towards me, he is approaching me, he has got a bigger target, he has got the full length of the ship as a target, if I make my circle and he continues to hide his red light and show his green.

Q. Say that you hadn't done any of these things, captain, but had stopped your engines at the second whistle? A. On the "Strathalbyn"?

Q. Second whistle on the "Strathalbyn," and had noticed this vessel apparently changing her course so as to cross the course that you had taken and had waited and noticed that the red light was entirely shut out and that her range lights were opening broad—

A. (Interrupting) The green light in sight?

Q. The green light in sight and the vessels approximately 1500 feet apart, what would you have done?

A. Well, the only thing I can do with my helm hard over, to make my circle small and get out of the line of the travel of this approaching vessel, is to go full speed ahead then.

Q. Would you have given any signal then if you hadn't given the danger signal or backing signal before?

A. Yes, I on the "Strathalbyn" would blow—when I got no reply or answer, I would blow an alarm whistle, if I felt alarmed, and I would—if I see two lights coming to me that way, the red light obscured and the green light broad and the range lights opening, I am helpless, I am in irons; the only alternative I have is to full speed ahead with the helm hard aport all this time. The greater velocity of water passing the rudder necessitates the vessel passing in a smaller radius than she will dead or under slow bell.

Q. Do you think it would have been necessary for you to indicate your position to the other vessel if you considered there was any danger at that time?

A. I certainly would. If I was on the "Strathalbyn," I would have made lots of notes. I would figure that I had exhausted all my ability and resources to avoid what appeared to be a collision, and then I would try to arouse assistance from my foe.

Q. Captain, taking the entire situation as I have detailed it to you, when would you have considered it necessary or proper for you to have blown the danger signal?

MR. HAYDEN: Same objection.

A. Well, I certainly would not have found any necessity to do it on the first whistle—passing signal. I would think I would be brought to a sense of interest when it was necessary to blow the second passing whistle, to have put my helm hard aport and full speed astern, blown my danger signal, indicated first that my engines were going astern and then blowing a danger signal, and if up to that time no reply, I would put my engines full speed ahead in order to accomplish what I was after, getting out of the track of this oncoming vessel.

Q. This is after the second whistle now?

A. This is after the second whistle.

Q. Which hadn't been answered. You would have put your engines—you say you would have gone full speed ahead if you had received no response to your danger signal?

A. Yes, because I must accomplish what I am after in a short space of time, I have got a big heavy chunk of a vessel, it don't move rapidly at best, but they will

swing quick with the helm hard over with the speed checked and then full speed ahead. You get the action on your rudder.

Q. Captain, what would the fact that you had blown passing whistles to an approaching vessel which was perfectly visible to you—all of the lights visible, and that she hadn't answered your passing whistles, indicate to you?

A. Well, I don't know what my first charge would be to the approaching ship; I don't know whether on my first thought I would take it something defective in my own craft or neglect on the approaching craft.

Q. I mean——

A. (Interrupting) I did at all times see this approaching vessel with her lights in sight, and had seen them for some minutes before even conversation opened with the "Flyer," as you give it to me.

Q. Well, with the further fact in your mind that you had heard this other vessel answer the "Flyer's" signal, would that indicate to you that she saw you or your lights, or not?

A. I could not say. It would indicate that he was—some one was on watch to answer the passing vessel, which was the "Flyer" passing the "Virginian," and when I blew to him and he didn't answer, and I blew again and got no reply, I understand, I seeing and having in my mind a proper observation of the exact position of the approaching vessel, it seems it would be left for me to "carry the baggage."

MR. BOGLE: That is all.

A. The laws of our steamboat work endeavor to make it impossible, if the law is complied with, to have a collision, and it is so, if both understand the situation; but the last resort that we have got, if we must collide, get hit under the red light—of two evils take the least. That is as I understand steamboat law. I have been pretty fortunate myself; I have had no trouble; no guarantee, though, that I won't have; but I will turn around and run away any time to avoid it.

CROSS-EXAMINATION.

Q. (Mr. Hayden) Captain, you are testifying now about a situation that you did not see, aren't you?

A. No, I didn't see it. I was somewhere away on the water here, handling another vessel at the time.

Q. And of course the matter of distances and how far you were off would make some difference in the idea of danger that might occur to you or anybody else, as to giving signals from a steamer, wouldn't it?

A. Well, different people have different vision. One light might appear very close and a very large area to one eye and not another, and it is only an approximation at best.

Q. The matter of distance——

A. (Interrupting) I don't know whether you mean on the land or whether you mean an approaching vessel.

Q. I am talking about ships right now. The matter of distance on the water is a matter that the pilot has to judge of when he is approaching another vessel, is it not? A. Yes.

Q. And if the pilot upon a vessel judges that the distance is sufficiently great for the ship ahead to rectify any particular error that may be made, he is perfectly justified in giving him a whistle to indicate the passing course of the vessel that is coming toward that ship that is making an apparent error, is he not?

A. Well, I am coming along down the Sound——

Q. (Interrupting) Answer my question, captain.

A. Let me do it so that I can do it intelligently.

Q. Do you understand my question?

A. No, I don't think I do.

(Question read.)

A. I can't say. I am not the judge whether my approaching ship is making any error or not.

Q. How far apart, captain, do you think it is necessary, when you are meeting a ship practically head-on, if the two vessels see each other, for them to miss a collision by each porting their helm upon the exchange of signals?

A. Well, circumstances would change the distance applied.

Q. Considering ships of the size of the "Strathalbyn" and "Virginian," as has been described to you?

A. I understand this night there was no wind.

Q. Practically none.

A. Yes. Well, I usually like to open conversation two miles and a half or three miles away, two miles and a half with a good—well, ocean-going ship, good substantial whistle, and invariably endeavor to open conversation first if I have a fair wind, because my sound penetrates further than the other fellow's could possibly, either night or day.

Q. You would not say that in attempting to open conversation a mile and a half away or a mile away was anything out of the way, would you?

A. Well, Mr. Hayden, I would be governed by the power of my whistle. If it was a defective whistle, low in power——

Q. (Interrupting) I mean two ships of the size of the "Strathalbyn" and "Virginian" are far enough away when they are a mile away, if they are approaching each other nearly and on, to miss each other if they understand the signals at that distance, aren't they?

A. They both want to be on the alert to do it.

Q. You think it takes a mile, do you, for two ships the size of the "Strathalbyn" and "Virginian" to veer far enough in response to signals to miss each other?

A. Everything wants to work in good shape to be sure.

Q. If both of them act under those circumstances as they should act, do you think there is any danger of collisions when the whistles are exchanged a mile away?

A. No, not if they are answered.

Q. How big are these boats, the Nippon Yusen boats, how long are they?

A. The longest ships that are in the line are 470 feet long.

Q. 470?

A. The regular ships. They have two, however, that are not so long.

Q. In going ahead with those ships, how much distance do you require to make a variation, that is, forward distance do you require to make a variation, a clearance of say fifty feet?

A. Fifty feet is pretty close waters, Mr. Hayden, in a ship of that length.

Q. I am asking a question, though, captain. How

much distance, going forward, do you need to change the course of your vessel fifty feet?

A. If I am working full speed ahead, a twin screw ship, I think I can swing her, veer her bow a distance of 50 feet in the length of the ship.

Q. Are the Nippon Yusen ships twin screw ships?

A. Yes, sir.

Q. Did you ever have to blow twice to a ship as you were approaching her, for them to understand the signals? A. Yes, sir.

Q. Have you ever had to blow three times?

A. A passing signal?

Q. Yes. A. No, I can't say that I have.

Q. You never have.

A. And have passed vessels, Mr. Hayden, that didn't answer me up to this time.

Q. I guess you have too. A. Yes.

Q. The fact of the matter is that is not an extremely unusual occurrence, is it?

MR. BOGLE: Oh, I object to that.

Q. (Mr. Hayden) How?

A. Well——

MR. HAYDEN: (Interrupting) What is the objection to that?

MR. BOGLE: I object to that as being immaterial.

MR. HAYDEN: All right.

Q. (Mr. Hayden) What do you say, captain?

A. I don't know that I could relate the circumstance, that brought about this mute condition of this vessel that I speak of, but her course was not mine, she was coming out of Seattle, the instance I speak of, and he ultimately went across and went through the west passage, but when he was coming around Alki Point or passing Alki Point, crossing my course, I blew one whistle to pass to port and he didn't answer me and he didn't turn to take the course.

Q. Was that at night time?

A. No, it was in the evening before lights were set.

Q. You understand, do you, captain, that when one whistle is given each ship is supposed to port her helm and go to starboard.

A. The man that blows his whistle should port his helm.

Q. Should not each ship go to starboard?

A. Depends upon whether it is understood or seen.

Q. Isn't it a navigation rule that when a port whistle is given, that each ship shall port the helm and go to starboard?

A. Yes, if you see that approaching vessel.

Q. That is the rule that is thoroughly fixed and settled in the mind of all navigators, is it not? A. No.

Q. It is a rule that should be thoroughly fixed in the mind of all navigators?

A. Yes, if the vessels each understand the action of the other and are in a position to be seen, act.

Q. Now then, when you hear two whistles from a boat ahead, the rule is for each vessel to go to port, is it not? A. Two whistles ahead?

Q. Yes. A. Starboard your helm to pass.

Q. You go to port?

A. You expose your starboard side. The vessel veers to port.

Q. That is the rule that should be known by all navigators, is it not? A. No.

Q. They should not know that?

A. They know that if they know who they are talking to.

Q. Yes. When a vessel hears one whistle from a point ahead, do you wish to be understood as meaning that that vessel does not know that the signal is a port passing signal?

MR. BOGLE: I object to the question. The rules show what the signal means.

(Question read.)

A. Yes, it is a port passing signal, but if——

Q. (Interrupting) Now——

A. (Continuing) —but I must see the origin of that noise, either by the lights or the form of the vessel.

Q. You don't know, unless you see the vessel, that the vessel ahead wants to go to port, do you?

A. I don't know that he is talking with me.

Q. Don't know that? A. No, sir.

Q. If you do know that he is talking with you, then

you know that the intention is to go to port, do you?

A. Yes, and it is me to answer the whistle that is directed toward me and port my helm. I must know the location of this approaching vessel in order to comply with his talk or conversation.

Q. If you know that a vessel is ahead of you and that she has blown you one whistle, don't you know that it is safer for you to put the vessel's head to starboard than it is to do anything else?

MR. BOGLE: I object to that. The witness has just testified to that directly to the contrary.

MR. HAYDEN: I object to that information-conveying objection of counsel.

MR. BOGLE: Surely the witness knows what he has testified to, and that very question was asked him. I object to the form of the question.

MR. HAYDEN: I am cross-examining. I do not think the question is out of the way.

A. If I know this vessel that is—or this whistle that is heard is for me, it is my duty to act. If I don't see the form of the ship nor the lights that are carried to designate his locality or position, I can't answer him.

Q. You cannot answer him with a whistle?

A. No, sir.

Q. Suppose you were on a vessel under the circumstances where another steamer had passed you on your starboard side and had gotten half or three-quarters of a mile ahead and you heard port passing signals exchanged between that steamer, the first whistle being blown by—between those steamers, the first whistle being blown by a vessel which you knew was not the vessel that had passed you or overtaken you and passed you—

A. (Interrupting) Yes.

Q. (Continuing) —and you had heard an answer—

A. (Interrupting) Yes.

Q. (Continuing) —to that whistle, you would then know that the two vessels were passing each other port and port, wouldn't you?

A. Yes, but I still might be in doubt as to the duplicating of the whistle, whether it was misunderstood by either of the approaching vessels ahead of me.

Q. Now then the next thing that you would hear would be one whistle? A. Yes.

Q. From this same steamer that had first blown to the vessel that had overtaken you? A. Yes.

Q. And you heard no whistle at all from the vessel that had overtaken you, in answer——

A. (Interrupting) Yes.

Q. (Continuing) —to that whistle. You then would know that the vessel that had overtaken you and passed was not in a position where it was necessary to answer the other whistle, would you not?

A. I don't just get that, Mr. Hayden.

(Question read.)

A. Well, I don't know that I would know it.

Q. That is what you would surmise, though, under those circumstances, would you not?

A. I can't tell. I would know that there was more than one craft——

Q. (Interrupting) Just suppose for the——

MR. BOGLE: (Interrupting) Let him answer. Go ahead, answer the question.

MR. HAYDEN: I am asking him a question.

MR. BOGLE: Let him answer your questions. Be fair to the witness.

MR. HAYDEN: I am trying to be.

MR. BOGLE: What were you going to say, captain?

Q. (Mr. Hayden) Didn't you answer that question, captain?

A. Well, you asked me, as I understood it, Mr. Hayden, that this fellow that had passed—that had overtaken me and passed—passing me and I answering him, and then, ahead of me, he opens communication with some other craft.

Q. The other craft opens communication with him?

A. Yes.

Q. And he answers?

A. Yes. I would take it for granted that there was more than one vessel ahead of me and not both going in the same direction, but I can't act to this on-coming ship until I know his position.

Q. I see, all right. Now then this on-coming ship

you know is coming toward you. Now you are——

A. (Interrupting) No, I don't know it, Mr. Hayden.

Q. You state they are not coming in the same direction—you know these vessels were not going in the same direction? A. Yes.

Q. In other words, that the "Flyer" was not overtaking the vessel that had blown to the "Flyer"?

A. No, I don't know that.

Q. Well, what do you mean by not going in the same direction?

A. Well, I don't know that I can substantiate my answer on that, either.

Q. Oh.

A. Now, here is one whistle that is applicable in one position as much as the other, one as good as the other; I can't say that I should say that this other vessel—the "Flyer" may have been passing the second vessel going in the same direction that I was. He passed me with one whistle and overtakes this vessel ahead of me and passes him with one whistle. It does not indicate that he is coming in opposite direction.

Q. Then you want to change your answer, do you?

A. Yes, I do.

Q. And it don't indicate anything, then?

A. It indicates that there is a craft ahead.

Q. That is all it indicates? A. Yes, sir.

Q. Now then suppose you hear, a minute or two afterwards, another whistle from, we will say the "Strathalbyn," to distinguish these vessels, meaning the vessel coming this way——

(Interrupting) Yes, sir.

Q. And no answer from the "Flyer"? A. Yes.

Q. Does that indicate anything to you?

A. Yes, sir, it does, it indicates that there is a craft.

Q. Is that all? A. Its position I can't ascertain.

Q. Does it indicate anything else?

A. It does to his observation and his hearing.

Q. Does it to you? A. No.

Q. Does that indicate that any vessel is signalling to another vessel?

A. Yes, or that is—yes, it should so be classed.

Q. So be classed? A. Yes.

Q. And does it indicate that that vessel is signaling for a port passing?

A. I presume it so could and should be taken, to some craft the whereabouts of which he knows.

Q. And you on the "Virginian" in that time, that is, the time you hear this second whistle from the craft coming—from the "Strathalbyn," say, would do what?

A. To me on the "Virginian" or to the master of the "Virginian," or pilot?

Q. Yes. A. Or pilot?

Q. Yes. A. Stop his ship.

Q. Anything else?

A. Full speed astern; kill his ship.

Q. He would stop and put full speed astern, on the second whistle? A. Yes, sir, I think I would.

MR. BOGLE: Which second whistle are you talking about?

Q. (Mr. Hayden) The second whistle that you heard from this boat ahead?

A. The unknown origin, yes.

Q. Let's get it straight, captain. You hear the—say "Strathalbyn"—make it specific——

A. Yes.

Q. (Continuing) —blow one whistle to the "Flyer"? A. Yes.

Q. And you hear the "Flyer" answer one whistle?

A. Yes.

Q. Then you hear the "Strathalbyn" blow another whistle, which is the second whistle of the "Strathalbyn"? A. Yes.

Q. On that whistle was the one you would stop your ship and reverse? A. No, I don't think I would.

Q. You would not; then what would you do?

A. I understood this was the second whistle that the "Strathalbyn" had blown, without any reply from the "Flyer."

MR. BOGLE: From the "Virginian."

A. No, the "Strathalbyn" was talking yet with the Flyer."

MR. BOGLE: Yes.

Q. (Mr. Hayden) Let's get it straight, let's go

back again so that we don't have any misunderstanding. You hear the "Strathalbyn" blow one whistle——

A. (Interrupting) Passing the "Flyer," yes.

Q. (Continuing) —and then you hear the "Flyer" blow a whistle—— A. Yes.

Q. (Continuing) —and then you know there are two ships off there? A. Two craft, the same.

Q. Two craft off there? A. Yes.

Q. And they are whistling to pass each other?

A. Yes, sir.

Q. You hear another whistle, which is the second whistle from the "Strathalbyn"? A. Yes.

Q. You hear no answer from the "Flyer"?

A. Yes.

Q. On the "Virginian" what would you do?

A. I don't think that would more than put me on the alert, when there was one naked whistle blown.

Q. What would you do?

A. I would be on the alert and certainly search for craft.

Q. Would you do anything else?

A. I would—not at the moment I would not. I might stop.

Q. You might?

A. If he blew again and no answer from the——

Q. (Interrupting) I am going to come to that so that we won't get mixed up. Is that all you would do, I mean just be on the alert or might stop?

A. I might stop. I would hold my boat's course.

Q. You would hold your boat's course? A. Yes.

Q. Be on the alert? A. Yes.

Q. And might stop? A. Stop the engine.

Q. Anything else?

A. Not at the moment. The next——

Q. (Interrupting) The third whistle from the "Strathalbyn"?

A. I would full speed astern, kill my ship and hold my head.

Q. You would full speed astern, kill your ship and hold your head? A. Yes, sir, endeavor to.

Q. You would not swing over to port, would you?

A. No, I would not. I would hold my position.

Q. And why would you kill your ship?

A. Because I am coming in close proximity to some unestablished noise, I would be in doubt as to the position of this vessel, of this noise-maker——

Q. All right. You say you would kill your ship?

A. Yes, sir.

Q. That is, on the third whistle, and you would hold your course? A. Endeavor to.

Q. Would you be in doubt about the other ship at that time?

A. I certainly would be in extreme doubt.

Q. And then what would you do, if you were in doubt?

A. I should kill my ship. There is nothing to do but await developments.

Q. Wouldn't you blow danger signals if you were in doubt? A. No, I don't think I would.

Q. Don't the rules require that when you are in doubt of the course or direction of another ship, that you shall blow danger signals?

A. If you know you are in danger.

Q. But it does not say that, does it—if you know you are in danger—it says when you are in doubt of the course and direction of another ship, you should blow your whistles, doesn't it?

MR. BOGLE: I object. The rules are the best evidence.

A. I don't blow a danger signal until the impulse hits me that such is the case.

Q. Until you are in doubt, you say?

A. But, to give myself the benefit of the doubt, I kill my boat, stop my ship and she is stationary; hold my boat's course as long as possible and wait for developments.

Q. I want to know if you are in doubt of the course and direction of a ship, if you, as a navigator, would blow danger signals?

A. I can't blow a danger signal until it occurs to me that danger exists.

Q. When you are in doubt as to the course and direction of a ship, would you blow danger signals?

A. Of my ship?

Q. Of the ship that is off somewhere, you don't know her course and you don't know her direction——

A. (Interrupting) No.

Q. (Continuing) —you are in doubt of her course and direction—— A. Yes.

Q. (Continuing) —would you blow danger signals then? A. No.

Q. All right, that is what I wanted you to say.

A. No. I am listening then, hungry to absorb something to guide me right if I am wrong. Prudence would bid me to stop my ship, to be in a position——

Q. (Interrupting) You have answered that, now, captain. Let me ask you a question a minute here. If you were on the bridge of the "Virginian" and you heard a whistle ahead and could not see anything, would you be in doubt as to the course and direction of the ship ahead of you? A. I certainly would.

Q. Captain, what does one whistle mean?

A. Well, it depends upon how it is applied—in the fog one thing and in clear weather another.

Q. What does one passing whistle mean—not a fog signal, a passing whistle?

A. When the vessels can be seen, either by lights or form of vessel, it means pass to port, and both the same——

Q. (Interrupting) Does it mean anything else?

A. It would signify that there was a vessel somewhere in hearing distance.

Q. I don't mean as far as vessels are concerned. I mean as far as the movement of ships is concerned.

A. Well, I might answer that, give a command to a mute——

Q. (Interrupting) No, I am talking about the movement of ships. Does one whistle or signal mean anything more than simply you are going to pass to port?

A. Well, as I interpret the law, one whistle means that I am approaching a vessel and have signified a desire, both from desire and from law, to pass to port.

Q. Is that all that you know that one whistle means? A. I can't answer a whistle——

Q. (Interrupting) I am not asking you about you answering it, I am asking what it means.

A. That is what it means when there are two vessels in proximity, the position of each known by the other.

Q. Does it mean anything else, to your knowledge?

A. Well, that is the established signal, pass to port, one whistle, but it is——

Q. (Interrupting) Under no other circumstances except to pass to port do you know that the one whistle would be used?

A. Yes, the man that blows the one whistle to pass to port evidently knows the line of conversation that he is using and it is up to him to abide by what he has tried to establish.

Q. And if the other steamer makes any manoeuver which prevents that, the other steamer is in the wrong for doing it, isn't she?

A. If the man who opens the conversation crosses his effort, he is in error.

MR. HAYDEN: Well, now, go back and read my question. I want an answer.

(Question read.)

A. No, she is not, because he is in ignorance, he does not do anything other than use common application of sense to kill his vessel to avoid getting closer to that that appears to be by him or close to him.

Q. If you get a port signal—passing signal from a vessel ahead and you don't see it and you swing your vessel over so her head goes to port, are you doing right or wrong?

A. Well, different conditions of the engines or rudder might bring that result.

Q. Can you answer whether you are doing right or wrong?

MR. BOGLE: He has answered it as near as a man can.

A. If I have fair knowledge of this approaching vessel and I starboard my helm against his one whistle and obscure my red light and expose my green, I have done wrong, but I have got to know where my foe is, or

my associate, or my co-worker, whatever you might class it.

Q. If you are not in sight of the other vessel and you hear one whistle from ahead——

A. (Interrupting) Yes.

Q. (Continuing) —would you say it was good navigation to turn your vessel's head to port?

A. With a starboard helm?

Q. With a starboard helm.

A. Veer, expose the starboard side?

Q. Yes.

A. I can't say that that would be faulty, because I am using all appliances in the ship and kill my way and she might veer one way or the other in doing that, whether that was accomplished by the helm or by the engine.

Q. Suppose the ship backs straight when you back her? A. As a rule they don't.

Q. I am supposing she does and I want you to suppose so. A. Yes.

Q. Would it be good navigation to turn such a ship's head over to port after you had got a passing signal from another vessel?

A. No, it would not be a good occurrence, but it might be a feature beyond my control.

Q. Now, captain, we have been all the time talking about this—I don't know whether you understand that the assumption is that this whistle that is heard is heard from a point ahead; you understand that is the assumption, don't you?

A. Yes. Yes, that should be granted and is the condition because——

Q. (Interrupting) That is the condition.

A. (Continuing) —some noises have been heard in passing, in meeting a boat prior to our close proximity.

Q. Now, the lights on the "Flyer" of course are perfectly visible? A. Seems to be.

Q. We will assume that? A. Yes.

Q. She is seen from the bridge of the "Virginian"?

A. Yes.

Q. Going to Tacoma? A. Yes, sir.

Q. If the "Virginian" would take the course of the "Flyer," there would not be any question whatever about

passing this other vessel which was blowing one whistle, would there?

A. Well, if they were absolutely in the same—so to speak—groove, there would not be no danger, no; but they were not.

Q. And there would be less danger when the vessel ahead, the "Strathalbyn," was blowing one whistle, if the "Virginian" would attempt to go in the same direction that she saw the "Flyer" successfully passing the other vessel, would there not?

A. Yes, but not ordinarily taken following one vessel; he is not the guiding vessel to me on a ship—any vessel that overtakes me and passes me, certainly not, unless he has a deeper ship and I am in narrow, confined waters.

Q. I appreciate you do not follow around the couse of a vessel, but under the circumstances here, this vessel ahead was a vessel that was exchanging whistles successfully with another vessel; it is under those circumstances that I ask you if she would not, by going over to where the "Flyer" had made this successful exchange of whistles—would not have been in a safer position?

A. Would have been in a safer position, providing the other fellow was not cutting across the two invisible canyons, channels, or grooves, that these ships were moving in.

Q. He would not get one whistle under those circumstances, from ahead, would he?

A. Well, I must take your own admittance—admission that he does not know the location of this approaching ship.

Q. But he has heard it from ahead. Everything in this case, captain, is on the assumption that the "Virginian" hears this whistle from ahead. A. Yes.

MR. BOGLE: Some point ahead.

A. Yes, and you have got six or eight points to yet be in the classification of meeting a vessel ahead.

Q. (Mr. Hayden) There is not any question in your mind, is there, that the "Flyer" passed this vessel with those whistles, and when they were given and exchanged that both of those vessels knew where they were, where

each other was, that is, the "Flyer" and the "Strathalbyn" at that time knew where the other one was?

A. Yes, because the whistles were answered—they were given and answered.

Q. And if the whistles were given and answered, those two vessels must have known where each other was? A. The performance of each other?

Q. Yes, the performance of each other. A. Yes.

Q. Now, assuming that to be the fact, that the "Flyer" knew where the "Strathalbyn" was and the "Strathalbyn" knew where the "Flyer" was—

A. (Interrupting) Yes.

Q. (Continuing) —and they had exchanged port passing whistles—

A. (Interrupting) Yes.

Q. (Continuing) —and you were on the bridge of the "Virginian", could you figure out any situation where it would not be safe for you to go to starboard, on hearing another blast of a whistle from the "Strathalbyn" which was not answered by the "Flyer"?

A. I might have an inclination to port my helm, but I could not with safety do it.

Q. You could not with safety do it?

A. I could not with safety do it. My endeavor would be to hold my course, and, as conditions got warmer, stop my vessel, waiting for something to develop to guide me on the action of my approaching vessel.

Q. Did it ever occur to you, captain, that if the lights happen to be out on a vessel that you are navigating, you might not know it? A. Yes.

Q. And under those circumstances, supposing the lights were out on the "Strathalbyn", wouldn't it have been the business of the "Virginian", when she didn't see them as soon as possible to blow a danger signal?

A. Well, I can't say that it would.

Q. Wouldn't you do it if you were in the "Virginian's" place?

A. No, I would not talk to a person which I could not address my conversation to.

Q. When you hear a whistle ahead and then another whistle ahead and then another whistle ahead?

A. I would stop my ship and kill her.

Q. You would not blow any danger signals to indicate that you could not see that ship ahead? A. No.

Q. To the man who was on her? A. No.

Q. If the man who was on the ship ahead had—

A. (Interrupting) I don't realize a danger which does not exist. So far as my apprehension goes, I can't see this fellow.

Q. What do you stop your ship for then?

A. Because this sound is increasing or getting in closer proximity.

Q. Why do you stop it?

A. I stop myself to give myself the benefit of the doubt, to act and act wisely when I do act.

Q. To give yourself the benefit of the doubt?

A. Yes.

Q. What doubt?

A. That there is some vessel in close proximity. I am ranging along here at a mile every five minutes or twelve miles an hour.

Q. Don't you know that under some circumstances one whistle means that you have got to keep your course and speed?

A. No, it does not, never signifies I have got to keep my speed.

Q. Never does? A. No sir.

Q. Under no circumstances?

A. No sir, not to my steamboat knowledge.

Q. If you receive one whistle from a vessel—

A. (Interrupting) Yes.

Q. (Continuing) —doesn't that indicate to you that you are to keep your course and speed?

A. No, it has nothing to do with any speed.

Q. Under any circumstances?

A. Under no circumstances has it to do with speed. If I know the origin of this whistle, I port my helm and pass.

Q. All right.

A. And to give myself a greater field to ascertain that position, I kill my ship.

Q. I just want now to get a "Yes" or "No" to this question, without any explanation to it, if you can do it.

A. Well, I will try to.

Q. Is there any circumstance in the navigation of a vessel, when you hear one whistle from another vessel, that you are to keep your course and speed?

MR. BOGLE: I object to that. The witness has testified to a hypothetical question—

Q. (Interrupting) Answer “Yes” or “No.”

MR. BOGLE: (Continuing) —from the facts as they have been presented to him.

A. Repeat the question.

(Question read.)

A. Does not apply.

Q. (Mr. Hayden) All right. Then I understand there is no such situation.

MR. BOGLE: I object to it as being immaterial in this case. He is only testifying to the situation that has been presented to him.

A. Let me go back over that—

Q. (Mr. Hayden, interrupting) I just want to get an answer, that is all, “Yes” or “No” to that question. You say it don’t apply. What do you mean when you say it don’t apply, do you mean “No” or “Yes”?

A. In one instance it applies, on a strained case, with an overtaking vessel; other than that it does not.

Q. It does not apply?

A. No. I am at liberty to hold my course and speed when a vessel is overtaking me; he is the approaching steamer and it is him to keep out of my way.

Q. That is the only instance, then?

A. That is the only instance where it applies.

Q. All right.

A. When two vessels are running in the same direction, one at greater speed than the other; it can apply there.

Q. If after you had given—being on the “Strathalbyn” now—if after the pilot on the “Strathalbyn” had given the vessel ahead the port signal which had not been answered, then gave the vessel ahead another port signal which hadn’t been answered—

MR. BOGLE: (Interrupting) By port signal do you mean one whistle?

MR. HAYDEN: I mean just that.

MR. BOGLE: One whistle?

MR. HAYDEN: Yes; port passing signal.

MR. BOGLE: I say, you mean one whistle?

MR. HAYDEN: I mean a port passing signal. I think the captain knows what it means.

MR. BOGLE: Well, I want to find out what you mean.

Q. (Continuing) And if he had given another port passing signal, and between the second and the third port passing signal—

A. (Interrupting) This is from the "Strathalbyn"?

Q. From the "Strathalbyn"—he observed that the "Virginian" was swinging to port—

A. (Interrupting) Yes.

Q. (Continuing) —would it have been proper for him to have then given cross signals? A. No sir.

Q. The only thing that the "Strathalbyn" can do under those circumstances would be to continue to swing to port, would it not?

A. Helm hard over and full speed ahead.

Q. And to continue to swing to port, is the question I asked you?

A. Yes, with all of the ability applied, yes.

Q. Now, whether he should go hard ahead or back up would depend on what his judgment told him would be the crossing point on the course of the vessel that was swinging, that is, the "Virginian", and his vessel, under such circumstances, would it not?

A. He has made a declaration of one whistle, and you demand that that is a port passing whistle.

Q. I asked you a question that can be answered by I think "Yes" or "No."

(Question read.)

A. I can't answer that. I don't know what his judgment is or his action at the time. Evidently he didn't do what the law requires him to do.

Q. Under some circumstances, captain, if the "Virginian" were swinging to port and the "Strathalbyn" was swinging to starboard, by going ahead hard and swinging also to starboard on the "Strathalbyn", you might force your vessel right directly across the course that the "Virginian" would be taking by her swinging,

might you not? A. You have got no other alternative.

Q. He could not stop and back her?

A. He could not stop and back her.

Q. Suppose he had concluded that the "Virginian's" course, if the "Virginian" continued to swing, would go across his course far enough ahead to miss him if he backed up, then what would you think the pilot should do?

A. He would help his rudder with going full speed astern, he would check his momentum; but if that didn't occur to him as being—accomplishing what he was endeavoring to do, I would helm hard aport, full speed ahead, to make the circle in the smallest radius possible.

Q. What I want to get at, it is a matter of judgment whether a pilot should go full speed ahead or full speed astern, and that judgment must be determined by the facts, how sharply the approaching vessel is swinging to port and what her speed is? A. Yes.

Q. It has to be determined by that, doesn't it?

A. Well, he is the doctor.

Q. And it is what you would have to do too, wouldn't you, that is what any navigator would do, isn't it, under those circumstances? A. Yes.

Q. When you get into a position of danger, or where you think there is likely to be danger, you have got to use your best judgment, taking all the circumstances into consideration, haven't you?

A. Yes, you have got to act as conditions require, according to your judgment.

Q. And the man who is on the bridge of the "Strathalbyn", who is an experienced and practical navigator, taking into consideration all of the conditions, including the speed of the vessels as they are coming toward each other, and everything else, his judgment is apt to be better than the judgment of a man sitting in a witness chair criticising it, is it not?

MR. BOGLE: I object to that.

A. This is an unpleasant duty for me to be called to pass on any man's good or misdeed—misdeed in particular, or misfortune. I will not say "misdeed", I will say "misfortune".

Q. Well, it probably is, captain, I suppose it is an unpleasant duty. A. The "Strathalbyn"—

Q. (Interrupting) Wait a minute. I asked you a question.

MR. BOGLE: Let him answer.

MR. HAYDEN: I am asking a question here about judgment?

MR. BOGLE: Be fair to the man. Let him answer.

MR. HAYDEN: I intend he shall answer my question.

MR. BOGLE: He is answering your question. You shut him off.

MR. HAYDEN: He has not answered the question.

MR. BOGLE: If you want to be fair, let him answer.

MR. HAYDEN: I asked him a question to be answered by "Yes" or "No."

A. I am here on oath to express myself. Judgment may be good or bad.

(Question read.)

MR. BOGLE: I object to that question as being improper and immaterial, and on the further ground that we have brought this witness here for the purpose of ascertaining whether the judgment of the man who was on the bridge was good or bad, under the circumstances as detailed by the man himself in his sworn testimony.

A. The judgment in the witness chair is better than the judgment of the man on the bridge acting, if you have put before me the facts of the case as they actually were, not as told, but as they are. If you take two vessels here on the table—

Q. (Interrupting) That is all.

A. (Continuing) —as diagrams, and passing, and divert them into various positions, the man who here sits, with no burden upon his mind or mostly with all his faculties at peace, he certainly is in a position to answer this manoeuvring of miniature vessels on this table better than it is where one man has the reins and the other man the whereabouts of the approaching vessel knows nothing.

Q. So that you have to take into consideration, in

connection with all this judgment matter, the circumstances under which the man is acting when he is exercising his judgment, and make allowances for those circumstances as to whether he is careless or not, haven't you?

A. Well, we can't say that he can attribute it to carelessness. I would not call it—I can't make a charge that this man was careless. It is not incumbent upon me to say so, either.

Q. When you say, captain, that you would go full speed ahead if you were on the "Strathalbyn", put your helm hard over to port, if you didn't get any answer, I want you to tell me at what speed the "Strathalbyn" would have been going at that time at what speed the "Virginian" would have been going at that time and how far apart they would have been and how fast the "Virginian" was swinging, to make that manoeuvre that you have described a proper manoeuvre?

A. I can't tell you.

Q. You haven't been given any facts on which to make that statement yet, have you? A. No.

Q. And you would have to have those facts in order to make it correctly, wouldn't you?

A. Why, I think I would. I know that if I open a conversation, Mr. Hayden, with a vessel, to pass to port, and his lights are in existence to show me that that I can do rightfully, then I keep doing it, and if a little is not enough I give him more.

Q. Sure, and use your judgment as to whether that is sufficient, from time to time?

A. And I bring into use the mechanical parts of the ship to get that result. And we all know that the velocity of the water past the rudder from the propeller is probably twenty times that of the speed of the vessel, therefore, if I put my helm hard a port, and run this tremendous volume of water against it, I am going to turn that vessel in a smaller radius than any other possible manoeuvring will do it. I have indicated to this man I am going to pass him to port; I port my helm a little; a little is not enough, give her some more, put her hard over. I may have backed my vessel in the first instance to help me churn around in a movable fixed pivot; I don't

get results; I put my engine full speed ahead, to carry out my intention to do that, and I am within the rights all the time in doing it.

Q. All right. Can you say, captain, on the witness stand, now, that had Captain Beecher put the "Strathalbyn" full speed ahead the "Strathalbyn" would not have been cut in two in the middle or in the stern instead of just barely touching the bow of her?

A. I can't say that.

Q. You can't say that?

A. No, I can't say that.

Q. And you can't say so because you don't know the circumstances close enough to make a judgment on it; isn't that right?

A. I know that the two vessels, the ships, must have struck damn near dead ahead, and, in order to accomplish that, there was no port helm put over—hard over, or there was no action of the propeller on the rudder to get that result.

Q. On which ship? A. On the "Strathalbyn".

Q. On either ship?

A. I don't know anything about the "Virginian" in this instance. You put me aboard the "Strathalbyn", having absolute knowledge of my ship and an approaching ship. When you put me on the "Virginian", you put me in a boat looking, I am to come and talk to somebody the existence of which I don't know.

Q. I appreciate that. You say because you think these two vessels struck nearly head-on—

A. (Interrupting) Yes sir.

Q. (Continuing) —that the "Strathalbyn" could not have changed her course.

A. I claim that the courses were not changed, because this man admits—

Q. (Interrupting) Wait a minute.

A. (Continuing) —that this fellow—

Q. (Interrupting) Wait.

MR. BOGLE: Go ahead. Let the man answer.

MR. HAYDEN: No, I am asking questions. I intend to have my questions answered, and not a lot of rambling around here.

MR. BOGLE: Let the man answer your question. There is no use trying to bulldoze him.

Q. (Mr. Hayden) Captain, suppose the "Strathalbyn" were headed somewhat to the port of the course that the "Virginian" was taking—

A. (Interrupting) Yes.

Q. (Continuing) —could not the "Strathalbyn" have changed her course so that they would have struck exactly head on?

A. Not if he put his implements in the position you claim he did.

Q. Could the "Strathalbyn" have changed her course, under those circumstances, so that the vessels would have struck exactly head on, if the "Virginian" continued on her course?

A. Then if he met him head and head, nearly so, he should not have opened the conversation to pass to port. The relative position of those ships were this (illustrating), admitted so by the lights on the "Virginian", that his position was head of him, he saw him over the forecastle head, ahead.

Q. How do you know?

A. Your own argument—your own testimony says that. He evidently opened one whistle to pass this fellow to port. Why? Because the position of the vessel permitted it. The other fellow didn't answer. Why didn't he answer? Because he could not see the approaching ship. Now, here is this vessel coming on here nearly—head-and-head or nearly so. This fellow comes and veers her with the port helm or hard astern, as the case may be, or full ahead, as it might have been—

Q. Go ahead, captain.

A. (Continuing) The "Virginian" coming on her course straight, could not have hit that vessel in the nose.

Q. Go ahead, captain.

A. Now, if one vessel had been over here, with the green light in sight, and the "Strathalbyn" was on the starboard hand of the "Virginian" and he would manoeuvre, put it down that they could not have hit head-and-head. If both had put their helm astarboard, they would have come around in this position (illustrating).

Q. You have got it all figured out now, have you?

A. It does not seem to me that there is any action that craft in water will take—other manoeuver than that.

Q. All of the other conclusions that you have come to today, do you think they are as correct as the conclusion that you have come to just now?

A. Well, I don't know that I would be able to anticipate which have been to you, but my intention is to see the facts as you give them to me and answer them according to my grasping your—

Q. (Interrupting) Do you mean to say that you are perfectly willing to sit here and say that when Captain Beecher says he ported that—he put his helm to starboard, that he didn't?

A. No, I don't, but I simply say that the scars on the vessel show that she didn't do it. Whether the vessel was defective or not, I don't know.

Q. All right. A. I don't deny what he says; I don't deny any assertion that he makes.

Q. Do you mean to say that it would be impossible for the "Strathalbyn's" helm to have been put over to port—

A. (Interrupting) Yes, and the vessel still hold her position and hit head-and-head.

Q. (Continuing) —and the vessels to have come together as they did; you mean to say that, do you?

A. Yes sir, I do.

Q. All right. A. I do.

Q. Do you mean to say that—

A. (Interrupting) It is possible this is an overloaded tramp steamer and had no control of herself. She evidently didn't have stability having her bottom under her. How many other ways she was defective I don't know.

Q. Do you mean to say that when Captain Beecher testified the head of the "Strathalbyn" swung from a point to the west of Pully Point to a point to the east of Pully Point, that that is wrong?

A. No, I don't say that. I don't make any charge against his testimony nor his assertion.

Q. You say it is impossible to have been so, do you?

A. I say it is impossible for those vessels to hit nose-and-nose and have his vessel do as he claims.

Q. Then either you or he are absolutely wrong about that, aren't you?

A. If the vessel mechanically is right—is properly constructed.

Q. Then either you or he are absolutely wrong about that? A. Yes sir, I would say that.

Q. When you hear one whistle, which means go to the right, doesn't it, one passing whistle means the ships are going to turn their heads to the right, doesn't it?

A. Well, you get back to the same proposition that I can't answer.

Q. Wait a minute until I get through. One passing whistle means the ships are to turn their heads to the right, doesn't it?

A. I can't answer that as you put it to me, Mr. Hayden.

Q. Some ship is going to put her head to the right when you hear one whistle, isn't it?

A. Yes. I would presume that that was what this fellow might be doing, and why didn't he do it?

Q. Is this the correct rule: "One short blast of the whistle signifies intention of or assent to steamer first giving"—"steamer first giving"—

A. (Interrupting) Yes.

Q. (Continuing) —"the signal to direct course to own starboard"?

A. Yes, and the whistle does not apply in the fog until you know where your boat is.

Q. There was no fog? A. No.

Q. Nobody said anything about a fog.

A. It does not apply. This man is in the fog.

MR. BOGLE: What are you reading from?

MR. HAYDEN: I am reading from the rules and regulations.

MR. BOGLE: Which rules and regulations?

MR. HAYDEN: Rules and regulations published by the government printing office in Washington, April 1st, 1910. Compiled rules and regulations.

MR. BOGLE: Where?

MR. HAYDEN: For all harbors, rivers and inland

waters of the United States except the Great Lakes.

MR. BOGLE: Published when?

MR. HAYDEN: In 1910.

THE WITNESS: We must take for granted this approaching vessel was in the fog. It was in ignorance.

Q. (Mr. Hayden) I didn't ask about fog.

A. He is in ignorance, and fog creates ignorance in the observation and seeing of a steamboat man.

Q. Fog generally creates ignorance; but ignorance may create some fog. A. Maybe.

Q. Especially in testimony. A. Yes.

MR. BOGLE: Oh, what's the matter with you?

THE WITNESS: Let me put it to you this way, Mr. Hayden, just a moment,—

Q. (Mr. Hayden, interrupting) That is all I want to ask you, Captain Sprague.

THE WITNESS: Let me make this remark—it is not evidence—it does not need to be carried so—I would prefer it would not—but I am on the deck of a ship; she is moving through the water, or she is dead, and it is a dark night; somebody hollers out, "Throw me a line; man overboard, throw me a line." I am within two or three feet of a rope, and I pick it up. Do I throw it until I ascertain the position of the man that is hollering for it?

Q. What has that got to do with navigating a ship.

MR. HAYDEN: I move to strike it all out.

THE WITNESS: Can I talk to this man that is trying to talk to me, until I know his position?

Q. Yes, you can talk to him.

A. How do I know he is talking to me? I can't see that vessel, I don't know his whereabouts. And Beecher was the fellow who brought this very same thing in regard to fog, he had a big fight on it, about vessels passing—

MR. HAYDEN: (Interrupting) I move to strike that all out as not responsible to any question.

A. Well, then I didn't wish for him to take at all this talk between you and I, and so requested before I spoke.

Q. I just want to ask one more question: You are

assuming all the way through in your testimony that the pilot on the "Virginian" did not know that the signals of the "Strathalbyn" were intended for the "Virginian", are you? A. Yes.

MR. BOGLE: I object to that.

Q. (Mr. Hayden) What is it? A. Yes sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Captain, in my hypothetical question I stated that after the first signal, which was answered by the "Flyer", that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions,—with some vessel ahead whose lights can't be seen?

A. Let him state that again. (The stenographer here read the question as follows: "Captain, in my hypothetical question I stated that after the first signal, which was answered by the 'Flyer', that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions"—)

A. (Interrupting) Well, "them" is the "Flyer"?

Q. No, the "Virginian".

A. I don't get that straight now. You have moved from the "Flyer", but I don't just catch it. (The stenographer here read the question as follows: "Captain, in my hypothetical question I stated that after the first signal, which was answered by the 'Flyer', that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions—with some vessel ahead whose lights can't be seen?")

Q. What I mean is this: Mr. Hayden—as I understood his last question, it stated to you that all of

your answers were upon the assumption that the officers of the "Virginian" did not take any of these whistles which they heard from ahead were for the "Virginian"?

A. I could not have anticipated it as being for me, if I had been on the "Virginian".

Q. If they, without positive knowledge that it was for them, assumed it was probably for them, would that change your answers any as to the proper manoeuvres?

A. Well, I perhaps should not know. They either must know, or not know.

Q. Well, I say, would it change the proper manoeuvres that I have stated, where they did not positively know who it was for?

A. Well, if he didn't know who it was for, he gave himself the benefit of greater length of time to ascertain with the distance between the ships by killing his vessel.

Q. Yes.

MR. BOGLE: The rule that you read into the record, Mr. Hayden, do you say that is the navigation rule—all of the navigation rules on that subject?

MR. HAYDEN: It is a navigation rule. I do not pretend to say it is all. The record shows what I read into it.

MR. BOGLE: Do you say there is no preliminary heading to that rule?

MR. HAYDEN: I think the law shows for itself.

MR. BOGLE: A preliminary rule that the vessels must be in sight of each other?

MR. HAYDEN: The law shows what it is.

THE WITNESS: Doesn't it say, when vessels are in sight of each other?

MR. BOGLE: That is the one he failed to read to you, that part of it.

MR. HAYDEN: The only rule about when vessels are in sight of each other, as to whistling to each other, that is the only rule there is about when vessels are in sight of each other. It has nothing to do with navigating the vessel at all, except so far as whistles are concerned.

Q. (Mr. Bogle) You are familiar with the Inland Rules, are you— A. I think so.

Q. (Continuing) —of Navigation; are you familiar with Article 18, Rule 1, which provides for the signals to be given vessels approaching each other end on or nearly so; and Rule 3 which provides “If when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle”; and Rule 5 of that same article governing the navigation of vessels when near a short bend and moving to and from docks, the signals to be given; and Rule 8 governing the navigation of vessels when running in the same direction; and Rule 9, which provides that “the whistle signals provided in the rules under this article, for steam vessels meeting, passing or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the day time by a sight of the vessel itself, or by night by seeing its signal lights”?

MR. HAYDEN: That is not all it says.

MR. BOGLE: You read it, then, if it is not what it says.

MR. HAYDEN: Is that “by seeing its signal lights”?

MR. BOGLE: You read it, there it is.

A. Those are the rules that have governed my manipulations of vessels. Up to now I have got a good record; I don't know how long I can keep it.

Q. Does not the single blast of a whistle, captain, according to the rules mean, “I am directing my course to port”?

A. It does. He is porting his helm, veering to starboard.

Q. “I am directing my course to starboard”?

A. Yes.

Q. Isn't that what the rules provide?

A. That is what it means, and vessels communicate when they are in sight of each other—the form of a

vessel, by day, open and clear atmosphere, and by the lights at night.

MR. HAYDEN: I object to all this testimony and any further questions along this same line, on the ground that the law is determined by the court and not by the captain, under those circumstances.

MR. BOGLE: I merely want to get the record straight from your misreading or failing to read all of the rules which you read.

Q. (Mr. Bogle) Now, captain, the mere fact that you receive a single blast from some vessel ahead, which you can't see, would that indicate that this vessel was coming toward you to pass you port to port, or if she was crossing your course under a port—changing her course to starboard, wouldn't she blow you the same whistle?

A. It does not apply to me at all; if I can't see the vessel, I don't know that he is talking with me.

Q. I see, but say that you can see a vessel and the vessel is approaching you, crossing your course and she is changing her course to starboard?

A. If he has me on his red light side he has got the right-of-way. He might be crossing my course at right angles or head-and-head meeting and veers to port to pass me—he veers to starboard with a port helm to pass me, exposing his red light side—his port side.

Q. When you hear a single blast of the whistle from ahead and you cannot see that vessel, have you any right to answer it? A. No sir.

Q. Well, captain, have you any right, under the rules, to change your course without blowing a whistle?

MR. HAYDEN: I object to that.

A. No. I kill my ship and hold my head.

Q. (Mr. Bogle) If, under the circumstances of this case, you had, as Mr. Hayden intimated you might have done, followed after the "Flyer", even if that had been a safer course would you have had a right to have taken that course without blowing?

A. What would be the necessity or occasion for me taking that course, with no knowledge of danger ahead?

Q. I didn't see any necessity, but what I am getting

at is this: Under the rules you would have to blow, if you changed your course, when another vessel was in sight of you, wouldn't you?

MR. HAYDEN: I object to that. The rules prescribe what you shall do.

A. I can't blow if I don't see the vessel.

Q. (Mr. Bogle) That is what I am getting at. If you change your course you have to blow, don't you?

A. If I change my course, something would bid me to do it, and if I have killed my ship I am giving a greater lapse of time for that information to come to me so that I can act wisely.

Q. Captain, Mr. Hayden has asked you about or questioned you upon your testimony as to what you would have done after the "Strathalbyn" had blown her second whistle to the "Virginian," which had remained unanswered, and noticed that the "Virginian" was changing her course; that is their testimony and I ask you that question upon that assumption.

A. Well, am I on the "Virginian" now, or on the "Strathalbyn"?

Q. You are on the "Strathalbyn."

A. Well, I blew my first whistle for cause; I got no reply; I blew it again for the same cause, and applied more energy,—would, to maintain that that I had endeavored to convey to my approaching ship, and port my helm.

Q. Now, captain, say at the time of this second whistle from the "Strathalbyn" to the "Virginian" that the two vessels were approximately a half mile apart—

A. (Interrupting) Yes.

Q. (Continuing) —and that the "Virginian" did not answer that whistle, and shortly thereafter, according to their testimony, shut out her red light—

A. (Interrupting) Yes.

Q. (Continuing)—would the "Strathalbyn" have the right, or would it be proper and safe navigation, for her to continue on with the engines stopped, under her own headway, and get herself in a position of danger where she would have to take such measures as you have testified to, or going full speed ahead with the wheel hard over.

MR. HAYDEN: I object to that question on the ground that it does not fairly state the evidence.

A. Well, I must say there, if little is good, more is better, and I am endeavoring to get out of the track of this vessel. I first indicate to an unknown listener of something that I was going to do; I substantiate that by a second announcement of that very same thing, and I am busy doing it, and in getting it my helm is hard aport, my engines may be full speed astern or full speed ahead; either would promote the circle, but full speed ahead would give the result with less radius of action.

Q. What I am getting at is this: The "Strathalbyn," according to their own testimony, had the "Virginian" in sight—

A. (Interrupting) Yes.

Q. (Continuing) —from the time she rounded Pully Point—when the "Strathalbyn" rounded Robinson Point she was in full knowledge of the entire situation. Now, is there any excuse for her getting or allowing the vessels to get in a position of danger without blowing a danger signal in sufficient time to prevent it?

MR. HAYDEN: I object to that. That is a matter of law to be determined by the court.

A. Well, I would say that if he had introduced what he claims he did do—had done it quicker, they would not have smashed where they did.

Q. But I mean when one vessel is master of the situation and has a full view of the other vessel and her navigation, isn't it up to her to prevent the vessels becoming in dangerous proximity, when the other vessel fails to answer any of her signals?

A. Yes, apply the remedy.

Q. Mr. Hayden asked you if the blowing of one whistle by the "Strathalbyn" would not in the first place indicate her desire to pass to port, and if that would not require the "Virginian" to also change her course to port? A. No.

Q. If the "Virginian" could have done—could the "Virginian," provided the vessels were in sight of each other, if she considered such a course unsafe, for any reason was unwilling to take that course, wouldn't she

have a right to either remain silent or cross-whistle to indicate her disapproval?

A. The "Strathalbyn" has nothing whatever to do but to blow an alarm whistle.

Q. I say the "Virginian," hasn't she that right, is she compelled to follow a course followed by another vessel, if she considers it dangerous?

A. She is compelled to—I am not governed by vessels in proximity to me. I am to keep clear of them, but he does not tell me the manoeuvres that I must undertake. In this instance—and there you are talking to no one, because he doesn't hear it,—he doesn't see the vessel—you can't charge the "Virginian" of wrong action.

Q. The purpose of my question was this, of determining whether or not the two vessels in meeting, and assuming for the purpose of this question they were in sight of each other, one vessel takes the initiative and indicates the way she is directing her course, is the other vessel under all circumstances compelled to assent to that? A. When they see each other.

Q. You think they are compelled to assent to it, do you?

A. Yes; but if he can't comply, announce the fact, blow his danger signal, stop his ship, put his helm over the other way.

Q. Is that the only way he can announce the fact, captain?

A. He is the man in Egypt; there is only one man working in that water. I claim, as I see it, that the "Strathalbyn" had it within their own hands if they had acted in time, to have avoided that collision. He admits that he saw this approaching ship. I am positive that if he had put his helm hard aport, either full speed ahead or full speed astern, he would not have been hit forward of the collision bulkhead at the angle at which the contact took place—not from the photograph.

Q. Captain, what did you mean when you said you were in doubt—if you had been on the "Virginian" you would have been in doubt as to the course or intention of the vessel ahead of you?

A. Well, I am absolutely in doubt, because I can't see her, I can't see the manoeuvring.

Q. That is what you mean, you could not see or know anything about her?

A. I am absolutely in ignorance of what she is doing. I know that there is some craft ahead of me or in somewhere forward over the forecastle head, because she has made numerous noises and I hear sound from that direction and from that alone. I stop my ship and kill her, to give me a greater length of time to have this thing explained so I can act wisely.

Q. Would the fact that she kept whistling to you indicate that she could see you?

A. Well, it would certainly indicate that one vessel saw some other vessel, that is certain; he was not talking to himself.

Q. Not being able to see this other vessel, you would not know whether you were in danger or not, would you, captain?

A. I certainly could not, because my actions would prove that I could not. I had given myself—hope to give myself a greater lapse of time, for something to be brought to light to govern my movements. The same thing, I take a vessel out of an enclosed dock, a slip, with high construction on either side of me, I am going to back out into the highway; the construction that is around me forbids me seeing anything that might be approaching at right angles with the course that my vessel will follow in getting away from this shore convenient; I blow three whistles to announce that there is a vessel moving, backing out of a pocket. He does not know what to do until he see the approaching vessel—if there is one in existence, he does not know what to do until he sees my motion; but the whistles do cause immediate alarm or attention, puts a man on the alert to be in readiness to act. These little gasoline whippersnappers around here are apt to bob out from in any concealed place. The condition here on our waterfront would apply in the slips between—the slips between 4 and 5 and 5 and 6 and 6 and 7; vessels could be in there unseen to each other, and two of them departing at the same time, for their own protection they should blow three whistles going astern: Anything that is passing

up and down the waterfront has a chance to prepare for an emergency that might occur.

Q. Under the circumstances of the position of these two vessels, as I have stated it to you, do you think that it would have been negligence on the part of the "Strathalbyn" to have allowed the vessels to get within a position of say a thousand feet of each other without blowing a danger signal?

MR. HAYDEN: I object to that as—

A. (Interrupting) Well, I can't say that.

MR. HAYDEN: Go ahead.

Q. (Continuing) When the lights of the "Virginian," as they appeared to the "Strathalbyn" according to their testimony—range lights were broad and the green light alone is visible?

A. The "Strathalbyn" has got nothing to do but put his helm hard aport, either full speed astern or full speed ahead; he has announced his desire to pass this approaching vessel on a certain position, he does not cross his own whistles.

Q. I am talking about a danger whistle now.

A. After he found it necessary to blow the second passing whistle to port, to which he got no answer to the first and the second, then it is certainly his time to blow a danger whistle—the "Strathalbyn."

RE-CROSS EXAMINATION.

Q. (Mr. Hayden) Captain, would you consider it good navigation on the part of the "Virginian" to allow the vessel to proceed, after the engines had stopped, for a space of about a minute after hearing the danger signals from the "Strathalbyn," before he backed?

MR. BOGLE: Oh, I object to that as being no such testimony in this case to substantiate any such thing.

A. May I relate it to you by showing about my own experience with ships—

Q. (Interrupting) Just answer my question. You are supposed to answer my questions as nearly as you can, captain, and I am not putting you on the stand. If you can give me an answer to my question, I would be obliged to you.

A. I will try to.

(Question read.)

A. Well, I am in a quandary again, I can't answer that, and for the reason—

Q. (Interrupting) When you heard the danger signals from a vessel ahead, if you were on the "Virginian" wouldn't you immediately reverse your engines, especially after having heard three passing whistles or two passing whistles?

A. Well, I can't say that I would do it instantly. If you let me explain why I say that, it will make it clear to you. Presumably the pilot on the "Virginian" knew his vessel; there are a great many vessels that are making full speed ahead or ranging ahead, immediately after a stopping signal and full speed astern they will churn right around on their heel; hard to make them follow their head.

Q. You are talking about a general proposition; it has nothing to do with this case, captain.

MR. BOGLE: I think it has got everything to do with it.

A. He is the judge of the vessel that he is handling.

Q. Yes, but, captain, both the master of the "Virginian" and the pilot have testified that she backs straight when you back her? A. Yes.

Q. (Continuing) —she does not swing. A. Yes.

Q. They both so testify.

A. If that is the case, which is a very rare one, it was his duty to back his ship, one continuous signal from full speed ahead to full speed astern.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) That is when he heard the danger signal? A. Yes.

(Witness excused.)

MR. HAYDEN: Now, as I understand our arrangement, we have stipulated that libellant's identification "Z 1," being the signed report of survey of the "Strathalbyn," at Everett on December 1st, 1913, and being signed by James Fowler, W. Frank Andrews, William H. Logan, E. C. Genereaux and Frank Walker, may be considered as the evidence of those gentlemen that on the first day of December, 1913, at Everett, the "Strathalbyn" was measured and that the measurements found therein are correct—that the measurements stated

in the report were those that were taken and found aboard the "Strathalbyn" and are correct as of that date.

MR. BOGLE: That is all right; we stipulate that that may go in without any further testimony, as being the measurements those gentlemen found on the boat on that date. Now, another matter: Do you remember when we were up in Victoria—

MR. HAYDEN: I propose to put it in now—the instructions as to the lights.

MR. BOGLE: That is the report of the Board of Trade.

MR. HAYDEN: Yes, instructions as to the survey of lights.

MR. BOGLE: Put that in in connection with Logan's testimony—wasn't it—

MR. HAYDEN: Yes. Do you want the whole thing to go in? I don't think it is necessary to put it all in. It seems to me if we just read what—

MR. BOGLE: (Interrupting) Let's see, why not put it in and if we have to go up on this case we can stipulate.

MR. HAYDEN: All right; introduce it in evidence, then.

MR. BOGLE: As a part of the testimony of Logan.

MR. HAYDEN: I introduce the pamphlet of instructions as to survey of lights and sound signals, published by his His Majesty's stationery office, these instructions being issued by the Board of Trade, under the provisions of the Merchant Shipping Acts, for the assistance and guidance of their officers in surveying the lights and sound signals of ships. So far as I am concerned, I am introducing it for the purpose of showing the regulations in connection with the location of the wick of the lamp with its relation to the block in the forward part of the screen which is provided for in Section 22, on page 11, Section 23, on page 12, and Plate 1 and Plate 3. The rest of it I do not think has anything to do with this at all.

MR. BOGLE: I have no objection to this going in from pages 11 and 12, that you have covered; and, let's see, you put in Plates 1 and 3, didn't you?

MR. HAYDEN: Yes.

MR. BOGLE: 1 and 3, with the understanding that if there are any regulations printed prior to this time, which are different, that I shall have the privilege of introducing those.

MR. HAYDEN: Oh, yes, sure.

The report of survey, marked libelant's identification "Z-1," heretofore referred to, is attached hereto and returned herewith.

The pamphlet "Instructions as to the Survey of Lights and Sound Signals" was marked libelant's exhibit "Logan Z-2," same being attached hereto and returned herewith.

(Filed May 26, 1914.)

NO. 1036, NO. 1052—CONSOLIDATED CASES.
OPINION ON FINAL HEARING.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner,
STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant.

HUFFNER & HAYDEN,
For Libelant.

BALLINGER, BATTLE, HULBERT & SHORTS,
For Strathalbyn S. S. Co., Ltd., as bailee of cargo.

BOGLE, GRAVES, MERRITT & BOGLE,
For Respondent, American-Hawaiian Steamship Co.

CUSHMAN, District Judge.

On the night of January 12, 1912, between the hours of 7:30 and 8:00 o'clock, the British tramp steamer "STRATHALBYN," owned by the Strathalbyn Steamship Company, a corporation, and the American freight steamer "VIRGINIAN," owned by the American-Hawaiian Steamship Company, were in collision on the waters of Puget Sound, at a point somewhere between Pully Point and Robinson Point, as a result of which both vessels and a portion of the lumber cargo aboard the "STRATHALBYN" sustained damage.

The above consolidated causes arise from the said collision, and were brought by the above parties for the

purpose of recovering damages sustained as the result of said collision. The causes come before the court at this time upon the libel of the Strathalbyn Steamship Company, as owner of the Steamship "STRATHALBYN," and the answer and cross-libel of the American-Hawaiian Steamship Company, as claimant and owner of the Steamship "VIRGINIAN," and the answer of the Strathalbyn Steamship Company, Limited, as owner and claimant of the Steamship "STRATHALBYN" to the cross-libel of the American-Hawaiian Steamship Company.

Subsequent to the filing of the above named libel, cross-libel and answers, the Strathalbyn Steamship Company, Limited, as bailee of cargo aboard the steamship "STRATHALBYN" at the time of the collision, filed its libel against the steamship "VIRGINIAN" on account of damage sustained by the said cargo, to which said libel the American-Hawaiian Steamship Company, as owner of the Steamship "VIRGINIAN," filed its answer and petitioned the court under Supreme Court Admiralty Rule 59, alleging that the said collision and consequent damage were caused solely by the fault of the Steamship "STRATHALBYN," and asking that the said Steamship "STRATHALBYN" be seized to answer for the said damages, or that her owners be brought in as parties respondent to the said libel to answer for said damages, which petition was granted, and the Strathalbyn Steamship Company, Limited, as owner of the Steamship "STRATHALBYN," filed its bond to answer for said damages, and filed its answer in the suit.

The parties hereto have stipulated that the consolidated causes should be submitted to this court for final determination upon the question of liability for the said collision, and should then be referred to a commissioner for the purpose of taking testimony as to damages, in accordance with this court's decision upon the question of liability.

As recovery is sought on behalf of each vessel for damage, alleged to have been caused by the other, the facts must be determined without the usual aid from any rule as to the burden of proof.

Libelant contends the cause of collision was the fault of the "VIRGINIAN" in not keeping a proper look out, and errors in navigation, in not porting her helm when signaled to do so by the "STRATHALBYN"; in not stopping and reversing her engines sooner; and in not giving a danger signal, if unable to see the lights of the "STRATHALBYN," after hearing the latter's passing signal.

The "VIRGINIAN" contends that the cause of collision was fault upon the part of the "STRATHALBYN" in that her lights were too dim to be seen; that her side lights were obstructed so as not to be seen from ahead; that she had no range light; that she failed to stop and reverse her engines promptly upon receiving no answer from the "VIRGINIAN" to her passing signals.

A comprehensive statement or analysis of the mass of testimony taken will not be undertaken. The conclusion as to the effect of the testimony is deemed sufficient.

The "STRATHALBYN" was a tramp steamer 387 feet long, with a 52-foot beam, having a full cargo of lumber, bound from Tacoma for Sydney, Australia. The "VIRGINIAN" was a freight steamer 492 feet long, with a capacity of 12,000 tons, carrying about 2,000 tons, on her way to Tacoma from Seattle, to finish loading.

The point of collision was not over a mile and a half southerly from Pully Point, off which point the "FLYER" overhauled, signaled and passed the "VIRGINIAN" to starboard, keeping off about 200 yards. This signal was answered by the "VIRGINIAN"—both of which signals were heard by the "STRATHALBYN" then approaching the "FLYER" and "VIRGINIAN," having passed Robinson Point and being on a course opposite to that of the "VIRGINIAN." The "FLYER" was making 14 knots an hour; the "VIRGINIAN" 11 and the "STRATHALBYN" 6, or a little more.

A few minutes after this passing of the "VIRGINIAN," probably not over five minutes, the "STRATHALBYN" blew one whistle to the "FLYER," requesting a passing port to port, the "FLYER" and "STRATHALBYN" being not more than a mile

apart. The captain of the "FLYER," seeing two white lights on her and concluding that they were range lights, accepted the signal, answering with one whistle. Both of these whistles were heard by those then navigating the "VIRGINIAN," but they testify they saw no lights on the "STRATHALBYN."

When the "STRATHALBYN" was on the bow, or abeam of the "FLYER," she blew one whistle to the "VIRGINIAN," which then must have been considerably less than a mile away, as it would take the "FLYER" twenty minutes to get a mile ahead of the "VIRGINIAN." It was three minutes, or more, from this first whistle to the "VIRGINIAN" until the collision occurred.

The pilot and third mate of the "VIRGINIAN," on the bridge, and the look-out, properly stationed, heard this whistle. The pilot realized—as, under the circumstances, he could not well help—that the whistle was from ahead and intended for the "VIRGINIAN." None of these men were able to see any light, or make out the approaching "STRATHALBYN." It is testified that the "VIRGINIAN'S" pilot then signaled for the stopping of the engines, hearing which signal, the captain of the "VIRGINIAN," then below, came on the bridge, and was immediately informed of the reason for stopping the engines. A second single blast of the whistle was then heard from the "STRATHALBYN" ahead. Still no lights or vessels being seen by any of those watching from the "VIRGINIAN," it is testified, the engines were reversed and, a minute or over after reversing, a danger signal—four blasts—was heard from ahead. Still seeing nothing ahead, the captain of the "VIRGINIAN" gave three whistles to signify that his vessel was going full speed astern.

Within less than a minute, the boats came into collision, immediately prior to which the look-out and third officer on the "VIRGINIAN" saw a white light on the "STRATHALBYN." The "VIRGINIAN" immediately disengaged herself from the "STRATHALBYN" and, as they backed away, the port light of the "STRATHALBYN" was seen aboard the "VIRGINIAN."

From the time of hearing the "STRATHALBYN'S" first whistle, those on the "VIRGINIAN" testify that her course was not changed and that, not being able to make out the "STRATHALBYN," or her lights, her whistles were not answered.

Those in charge of the navigation of the "STRATHALBYN" testify that, when the "STRATHALBYN" gave her first signal, a single blast, to the "VIRGINIAN," the red and green lights of the "VIRGINIAN" were plainly visible, indicating that she was coming directly head-on; that, as this signal was given, the helm of the "Strathalbyn" was ported a point or more; that, after waiting a minute and receiving no answer from the "VIRGINIAN," her red and green lights being still visible, another single blast was blown; the helm again ported and the engine stopped; that, as this signal was given, the red light of the "VIRGINIAN" began to shut out and her green light to open, indicating that, instead of going to starboard, as signaled, she was directed across the "STRATHALBYN'S" bow; that, after waiting a minute, the "VIRGINIAN" not answering and her red light still being hidden, the "STRATHALBYN" blew another single blast and a minute and a half later reversed her engines. The "VIRGINIAN" still coming on; giving no signal; no change in her course being observable and collision being imminent, the "STRATHALBYN" gave the danger signal, which was immediately answered by three whistles from the "VIRGINIAN."

In spite of a discrepancy in the testimony as to the number of passing signals blown by the "STRATHALBYN" before the danger signal—two, as testified on behalf of the "VIRGINIAN," and three, as averred by those on the "STRATHALBYN," it is clear that three were given.

The faults alleged as to the lights of the "STRATHALBYN" will be first considered, as first in point of time, and so affecting that which followed. The night was dark and cloudy, a good night for seeing lights. The wind was southerly, an advantage to the "VIRGINIAN" in hearing the whistles of the "STRATHALBYN." There was, at the place of the

collision, plenty of room for, and no embarrassing element to the navigation of either vessel, other than that produced by the conduct of the other.

The "STRATHALBYN" was equipped with electric signal lights, but, several days before she was ready for sea, the dynamo was found out of commission and was not repaired prior to her departure. She was supplied with standard oil lamps and oil. The lamps were new two years before when brought aboard, but there had never been occasion before to use them. The oil had been secured six months before.

Several hours before leaving Tacoma, quartermaster Taylor, as he testifies, carefully prepared and tested these lamps, put in new wicks and oil fresh from the tank; lighted them and trimmed the wicks. The witness's testimony, if true, could have been corroborated in certain particulars where it has not been done.

Prior to reaching the point of collision, the "STRATHALBYN" met and passed, on her starboard, near Brown's Point, the Steamers "INDIANAPOLIS" and "DARING." The "INDIANAPOLIS" later overtook and passed to starboard of the "STRATHALBYN" at Robinson Point, a few minutes before the collision. The "STRATHALBYN" met and passed port to port the Steamer "FLYER" immediately before the collision.

After the collision, the "SALMORA," a thirty-ton gasoline tug, passed between the "VIRGINIAN" and "STRATHALBYN"—about 150 yards away from the "STRATHALBYN" and a little nearer the "VIRGINIAN."

The effect of the evidence of those in charge of the navigation of the different vessels passing the "STRATHALBYN" on the night in question is that her lights were not ordinarily bright; that they had difficulty in seeing them; that they were not visible as far as they should have been; that the lights could not be seen from points ahead where they should have been.

The stern light upon the "STRATHALBYN" went out before Robinson Point was reached. The starboard side light was trimmed and relit immediately after the collision—whether finding it to be out or very dim was the occasion is not clear from the testimony. The

masthead light was taken down after the collision and examined. When it was again raised, the cap on the top of the lamp was left up to give ventilation. It is not clear whether it was not closed when it was taken down for examination.

The officers of the "STRATHALBYN" appear to have looked at the lights often during and before the signaling to the "VIRGINIAN." While vigilance in this regard is to be expected of men experienced in navigation, there appears to have been over anxiety on this night about the lights, which tends to show that it was realized that they were not satisfactory.

A circumstance occurring an hour or more before the collision, when the "STRATHALBYN" near Brown's Point, met the "DARING," probably called the attention of those on the "STRATHALBYN" to the condition of the lights. The mate on the "DARING," who was at the wheel, testifies:

"A. Well, first I heard two whistles, and then the next was I discovered a dark object ahead, and about that time the captain stepped out from his room and asked why I didn't answer the two whistles * * * (interrupted).

"Q. Did you answer the two whistles?

"A. Eventually, yes sir.

"Q. Did you at the time when you first heard them?

"A. No sir.

"Q. Why didn't you?

"A. Because I didn't recognize where they came from.

* * * * *

"Q. Could you see the vessel that gave these whistles?

"A. Well, I will have to say no, under the circumstances, without explaining.

"Q. What was the first thing that you did see of the vessel, and whereabouts did you see her, if you saw her?

"A. Well, she was pointed out and at about the same time it was apparent to me that the dark object was opening out lights, and I was convinced, then, that it was a vessel.

"Q. Did you see any lights on her?

"A. I saw two.

"Q. Where were they and what kind of lights?

"A. They proved to be on the forward part of the vessel, white lights; and about the time I answered or eventually answered the two whistles, the one light--lower light disappeared, and I concluded it was a lantern over the side where they had been clearing their anchors or something of that kind."

The failure of the "DARING" to promptly answer the signal of the "STRATHALBYN," probably, suggested to the latter's officers a defect in her lights.

The regular electric side lights of the "STRATHALBYN" were placed on the upper bridge. The oil lights, being used upon the night of the collision, were not in the screens upon the upper bridge, but in those on the lower bridge, or chart room deck, which was 15 feet, 4 inches above the cargo deck below. No defect has been shown in these screens, which were eight inches above the chart room deck.

The cargo forward on the deck below was piled about fourteen feet high, that is, approximately as high as the lower bridge, so that men moving about could step from the top of the lumber upon the lower bridge. This lumber was laid, or piled, lengthwise of the ship between stanchions placed on end, or standing up inside and against the rail on either side of the deck forward. The stanchions extended some distance above the lumber piled between them, some being as high as twenty feet above the deck. All of the stanchions extended higher than the lights and would obscure them from ahead, if not kept inboard from the blocks in the front of each light screen, placed there to keep the lights from shining across the bow. (Inland Rules, Art. 2 (d), 2 Fed. Stat. Ann., 174; 30 Stat. at L., 97.)

These stanchions were about seven in number, upon either side, placed at irregular distances apart, the average being about twelve feet. They were six by ten inches, each, according to the testimony for the "STRATHALBYN," placed with the broad face to the rail, though it is shown to be usual to place the narrow face to the rail for greater strength in holding the cargo.

The outboard side of the blocks in the front end of

the light screens were 47 feet, 7 inches apart. The lights in the screens, back of the blocks, were the same distance apart. The first stanchion upon the port side was about eight feet forward of the front of the lower bridge. At this point, from the inside of the bulb, or top of the rail on the port side to a like point on the starboard side was 48 feet, 7, or $7\frac{1}{2}$ inches, about six inches and a half further outboard on each side than the side lights. It, therefore, follows that, unless this first stanchion on the port side leaned inboard at least six and a half or seven inches at a point level with the lamps used, it would obstruct this light forward.

Much testimony has been taken as to the position, in this respect, of this and the stanchions forward of it, prior to, and after the collision, as well as that of like stanchions used with later cargoes on the same ship, together with the question of whether such stanchions generally tend outboard, or otherwise.

The height of the rail above the deck, against which the stanchions were placed, was about four feet. The lumber cargo, therefore, extended ten feet above the rail between the stanchions. The stanchions, after the cargo was on, were drawn together by lines passing across the deck over the lumber, the winch being used to draw them up.

Under these circumstances, it is reasonable to conclude that the stanchions would lean outward slightly. By the force of gravity, as the loading progressed, the tendency would be for the lumber to spread and shuffle outward, and all the effect of this would not be overcome by drawing the stanchions inboard afterwards. Such result with poles or lumber on railroad cars, or cord wood upon a wagon, between stanchions, are matters of common observation.

In one slight particular there was a difference between the stanchions on either side. Upon the port side, underneath and on the inside of the rail top, running lengthwise of the rail, was an iron pipe which extended an inch further inboard than the innermost part of the rail top. To protect this pipe, an inch piece of board was placed between the stanchions and the rail. While this might tend to lessen, to a slight degree, the obstruction

to the light shining forward, by the stanchions on the port side over the starboard, it would not cure it.

The pilot of the "STRATHALBYN" testified to seeing the port light shining on the stanchions, as follows:

"Q. Did you observe the rays of the red light upon the stanchions?

"A. Indeed, sir, several times.

"Q. State how they appeared?

"A. They ranged right forward and touched three or four stanchions I noticed.

"Q. On what side?

"A. Port side; the red light.

"Q. I mean inside or outside the stanchions?

"A. The outside stanchions, sir.

"Q. It showed full on the first stanchion did it?

"A. Yes, sir.

"Q. And ranged along so that you could see—

"A. I could see the reflection of the light on three or four stanchions.

"Q. Ahead of the first stanchion?

"A. Yes, back to the foremast rigging."

The Captain of the "STRATHALBYN" testified to seeing the light shining on the stanchions:

"Q. Did you observe the rays of light upon these stanchions?

"A. Yes, I did.

"Q. How did it appear?

A. They would shine on the outside of the stanchions."

As also, does the first mate:

"Q. Did you notice whether or not the red rays of the port light shown on the outside of any of these stanchions forward of the light?

"A. I could see the reflection on both sides, the green and red one, on the after stanchions.

"Q. Did you notice it ahead on any other stanchions, ahead of the after stanchions?

"A. No, I don't think I saw it on any of the rest of them. I don't think so."

The condition described could only result in hiding

the light from ahead. The only question would be the extent, or zone, over which it would be hidden.

Much testimony has been introduced on libelant's part to show that the lights of the "STRATHALBYN" were bright and visible from ahead; but it is overborne by that which has been indicated. Passengers upon the "FLYER" were among the witnesses of libelant.

While they were, doubtless, as honest and disinterested as the witnesses for the "VIRGINIAN," those on the "FLYER," "INDIANAPOLIS," "DARING" and "SALMORA," actually engaged in navigating them with reference to the "STRATHALBYN," as witnesses, while possessing the advantage of having as great, or better opportunity, knowledge, skill and lack of interest in making these observations of the "STRATHALBYN" and her lights, as had libelant's witnesses, also had an added advantage in the necessity and incentive, in navigating their respective vessels, with reference to the "STRATHALBYN," to observe her and her lights closely.

This one advantage on their part, though they gave negative testimony—that they did not see the lights upon the "STRATHALBYN", or see them as soon as they should have been seen,—more than compensates for the advantage of those witnesses who had no particular reason to observe, who testify that they recall seeing the lights in question.

This does not apply to a number of witnesses for libelant, who, afterward had reached Tacoma of the collision, set out in a small boat to meet the "STRATHALBYN" upon her return to Tacoma. They testify that, as the "STRATHALBYN" came towards them, they could see both of her side lights at the same time. Owing to the evident interest of these witnesses, the inconsistencies in their testimony and the fact that their observations were made several hours after the collision, their evidence is considered of less value than that of those navigating the other boats.

The "VIRGINIAN", by not answering the passing signals of the "STRATHALBYN" and the "DARING", by not promptly answering her signal, acted in accordance with what those navigating the "VIR-

GINIAN" and "DARING" now testify was the condition of the "STRATHALBYN" at that time, in not having lights that could be seen. These facts give added force to their testimony.

The Amboy, 22 Fed. 555;

The Westfield, 38 Fed. 366;

The General, 82 Fed. 830;

The Pierre Corneille, 133 Fed. 604.

In a sense, the same may be said of the "INDIANAPOLIS", for her captain and quartermaster say that, having passed the "FLYER" and "VIRGINIAN" a few minutes before the collision, and having noted the poor condition of the "STRATHALBYN'S" lights upon the two occasions of meeting and overhauling her, the captain of the "INDIANAPOLIS" was apprehensive that there might be trouble in the "VIRGINIAN" and "FLYER" meeting the "STRATHALBYN" and, for that reason, he did not change his course immediately upon passing Pully Point as usual—which would have shut off his view of all these vessels, but kept on his course for a time watching them.

The greater value of the testimony regarding the lights on the "STRATHALBYN" of those navigating the "FLYER", over that of her passengers, would be greatly lessened as the "STRATHALBYN" drew abeam and passed the "FLYER" for, as soon as the "FLYER" was well clear of the "STRATHALBYN", the motive of the former's officers to closely observe the "STRATHALBYN" would have ceased and their attention be concentrated along the course of their vessel; while the passengers, without such responsibility, might then well observe the "STRATHALBYN" and her lights more closely than the officers of the boat. It is, therefore, probable that these passengers did observe the port light of the "STRATHALBYN" when she was abeam the "FLYER", though the officers did not.

None of libellant's witnesses is more positive in testifying that both side lights were visible from a point ahead than Strand,—a man taking care of the boats at the Tacoma Yacht Club, who testifies that, after putting the lights out on the yachts, he went ashore to the wharf, where he met a longshoreman, to whom he

talked as he looked out over the Sound. His testimony regarding the lights on the "STRATHALBYN", as she lay at anchor shortly before going to sea, is as follows:

"A. And I seen both side lights at the same time, boat, was swinging once in a while and mostly I seen the green light, and they appeared to me to be ordinary good side lights.

"Q. How did the masthead light appear to you?

"A. Just as good as the rest of them—side lights.

"Q. How far away would you say the "Strathalbyn" was from the Commercial bridge where you were standing?

"A. Oh, about a little bit more probably than a quarter of a mile. * * * *

"Q. Now, captain, will you describe how the vessel was swinging, if she was swinging at all, just describe that?

"A. Yes, she was swinging more or less, just as the wind appeared; sometimes a little bit stronger, you see, and sometimes dying down again.

"Q. And her bow was pointing which way?

"A. Her bow was pointing diretly on the place where I was standing, most of the time.

"Q. How would you say the side lights appeared to be burning compared with the ordinary lights of vessels?

"A. I could not see any difference from an ordinary good light—good side lights and her side lights.

"Q. And the same question with respect to her masthead light?

"A. Yes. Yes, sir, all the lights.

"Q. How long were you standing on the Commercial Street bridge observing these lights and the vessel?

"A. I was standing there for about a half an hour.

"Q. And how did it happen you were standing there for a half an hour?

"A. I was talking with a longshoreman and looking at the boats passing around there, and

looking after the yachts, because it was blowing more or less and that is why I happened to stay there and watch the harbor.

“Q. Did you see these lights more than once while you were standing there?”

“A. Oh, yes, on and off all the time.”

The side lights are running lights and only in place when the vessel is under way. Taylor, the quartermaster on the “STRATHALBYN”, who had charge of, and placed the lights in the screens testifies:

“Q. What time did you light them?”

“A. I had finished my tea, and they sang out “LIGHTS OUT”, and they started to heave away the anchor.

“Q. Who told you to light the lights when they started out?”

* * * * *

“A. It was my place.

“Q. Is that your regular duty on the ship?”

“A. It was that day.

“Q. Did anybody order you that evening to light the lights, and if so who was it?”

“A. I heard the order come down from the deck, ‘Lights out’ and it was my place to light them, and I went and lit them.”

Mr. Strand was, doubtless, mistaken.

A number of the crew of the “STRATHALBYN”, in the forecabin at the time of the collision, who clambered back over the lumber along the port side, testified to seeing the “STRATHALBYN’S” port light. Some of them say they saw it inside; some outside of the stanchions, and some are not clear how they saw it.

The collision left the “STRATHALBYN” with a bad list to starboard, taking her starboard side light nearly to the water. If any of the crew saw the port light inside the stanchions, there must have been a very considerable obstruction to the light forward and off the port bow.

Considering that the ship narrowed forward of the bridge from about 48 feet to about 44 feet (or four feet) in a distance of 80 feet, there would be two feet narrowing upon the port side; that seven stanchions

were arranged in this distance along the rail, each exposing a six-inch surface, a total exposed surface of three and a half feet, it is clear that, from any point forward of the stanchions, there would be such an overlapping of stanchions as to prevent a man seeing the side light between the stanchions. It is probable, on account of the list of the vessel to starboard, that, as the men came along the port stanchions; got near the light and straightened upright between the last stanchions, all of which would be canted with the ship to starboard, they were able to look down over the outside of the last stanchion into the port light screen, the inside board of which would be also canted to starboard. This is to be inferred from the testimony of these witnesses.

One of the crew testified that, after the collision, his knee was hurt, and,

He crawled on his hands and knees to the port side; then crawled along, leaning on the railing, walking along stanchion by stanchion, dragging himself along as best he could. After he got to the port side he stood up and went aft. That he saw the port light when he was going aft on the port side; that he could look straight back at it and that he was about ten feet in front of it when he first saw it.

Another testifies that,

He did not see the port light until he got up on the port side. The vessel was heeling over and he made for the high side of the boat. He did not look over the stanchions to see the side light; he could see through the stanchions and see the port light, because the stanchions were far apart. He saw the side light as soon as he came up on the port side. He walked up to the port side at right angles from where he came out. He was more than 15 or 20 feet from the light when he first saw it and was standing inside the stanchions when he saw it.

A third testifies:

"She (the Strathalbyn) had listed over all the time * * *"

and that, after the collision:

"She had listed bad enough that I had to hold to

those Scantlings (stanchions) that was keeping the cargo tight, catch hold and walk around the port side."

On behalf of the "STRATHALBYN", it is contended that even if it were conceded that the port light was, to some extent, obscured ahead, yet the angle of approach of the "VIRGINIAN" was so great that the light should have been seen, notwithstanding it was hidden from ahead. It is clear that the vessels, on opposite courses, came into practically a head-on collision. Probably, the courses were not over a point off of being directly opposite. This conclusion is at variance with much testimony as to the repeated porting of the helm of the "STRATHALBYN", the change in the "VIRGINIAN'S" course to port and other testimony, expert and otherwise; but all of this is overborne by the evidence of contact left upon the vessels after the collision.

The "STRATHALBYN", at the time of the collision, had a six degree list to starboard. The "VIRGINIAN" had no list. The stem of the "VIRGINIAN" struck across the stem of the "STRATHALBYN" at the 29-foot mark. Above that point, the stem of the "VIRGINIAN" entered the port bow of the "STRATHALBYN". Below that point, the stem did not enter the hull of the "STRATHALBYN", but the starboard bow of the "VIRGINIAN" moved, in contact, aft along the starboard bow of the "STRATHALBYN", the fore-foot of each vessel passing by that of the other.

The lower structure of the "STRATHALBYN" being stronger than the upper and able to fend off to starboard the "VIRGINIAN", whose stem and bow remained rigid throughout, the stem of the "VIRGINIAN" above the 29 foot mark, as it entered the upper part of the "STRATHALBYN", instead of following a prolongation of the line of approach and contact, was deflected through to the starboard bow of the "STRATHALBYN", along a line corresponding to that of the latter's starboard bow, below the 29 foot mark. The stem of each vessel is practically perpendicular fore and aft—that is, with no overhang forward, so that there could have been no contact with the "STRATHAL-

BYN'S" port bow above the 29 foot mark before that had with the starboard bow below.

It is, therefore, concluded that the side lights of the "STRATHALBYN" were hidden to the "VIRGINIAN" as she approached, and that this was a proximate cause of the collision. It is not clear whether, but for the obstruction, they could have been seen in time to prevent the collision.

It is contended upon the part of the "STRATHALBYN" that, conceding her side lights were hidden from ahead, still the "VIRGINIAN" should have seen the masthead light of the "STRATHALBYN" in time to answer her passing signal and avoid a collision. The failure on the "STRATHALBYN'S" part to properly position satisfactory side lights cannot be so excused.

The failure of those on the "VIRGINIAN" to see the masthead light of the "STRATHALBYN", it is contended, is evidence of want of a proper look-out—enough of itself to explain the failure to see the port side light.

It is true the Captain of the "FLYER" made out two white lights on the "STRATHALBYN" which he concluded were her range lights. One of these was probably her masthead light; but, as she had no aft range light, the other was probably a lantern forward about the forecastle. If it had been a port hole light, necessarily on the port side, what the captain took for the range lights would not have opened to as to satisfy him with a passage port to port. This lantern upon the deck would probably be hidden to the "VIRGINIAN", then directly ahead, by the rise forward of the rail of the "STRATHALBYN", as the vessels were approaching head on, the mast head light would appear stationary and, under the circumstances, a failure to distinguish it from shore lights upon Vashon Island will not be held a fault.

In the case of *The Oregon* (158 U. S., 186), the court found the failure on the part of the *Oregon* to recognize the *Clan Mackenzie's* anchor light to be a fault, but further found that the Government light, with which it was claimed the anchor light was confused,

to have been plainly visible, and that it should have been seen, thus preventing any confusion.

Having reached this conclusion, the questions of whether the "STRATHALBYN" should have carried an aft range light, or whether there was other fault in her navigation will not be considered.

The question of fault upon the part of the "VIRGINIAN" remains to be considered. The collision did not occur for three or four minutes after the first whistle of the "STRATHALBYN" to the "VIRGINIAN", during which time the "STRATHALBYN" blew two passing and a danger signal.

On account of the general route of vessels at the point of collision; the signals exchanged between the "STRATHALBYN" and the "FLYER", indicating a passage port to port, and the signals given to the "VIRGINIAN" by the "STRATHALBYN", the "VIRGINIAN" must have known, approximately, the general position and course of the "STRATHALBYN", and when those aboard her could not make out the "STRATHALBYN" or see her lights, they should have reversed her engines not later than the second whistle. That she did so is testified to by witnesses for the "VIRGINIAN" with some detail.

The bell book in the engine room of the "VIRGINIAN" contains the following entries:

Starboard.		Port.	
O	7:57	O	7:57
MM	.58	MM	.58
O	.59	O	.59
V	8:09	V	8:09

Indicating: (O) "stop", 7:57; (MM) "full speed astern", 7:58; (O) "stop" (reversing), 7:59; (V) "slow ahead" 8:09. The engine room log book of the "VIRGINIAN" contains the following:

"Stop 7:57; full astern 7:58, stop 7:59, ahead slow 8:09. In collision with S.S. "Strathalbyn" at 7:58 p. m."

Article 28 of the Inland Water rules, provides:

"When vessels are in sight of one another a steam-vessel under way whose engines are going full speed astern shall indicate that fact by three

short blasts on the whistle". (30 Stat. L., 102).

The three whistles of the "VIRGINIAN" were not given until after the "STRATHALBYN'S" danger signal, less than a minute before the collision.

Captain Beecher, pilot of the "STRATHALBYN", testifies:

"Q. When the Virginian and Strathalbyn came into collision, did you notice whether or not the Virginian was backing?

"A. When he blew his three whistles in answer to my danger signal, I looked along the hull which was very plain, and I called attention that she was just beginning to back; the backwater was just getting back under his starboard quarter."

Captain Crerar of the "STRATHALBYN" also testifies:

"Q. Did you observe whether or not the Virginian was backing at the time you came into collision?

"A. Just before she struck us, Captain Beecher directed my attention to the wash of her water coming up.

"Q. Where did that appear to be?

"A. Around her stern.

"Q. How far forward?

"A. It did not get forward at all, but was just beginning to come up. Captain Beecher remarked, "He is just going astern now."

It is, therefore, concluded that the engines of the "VIRGINIAN" were not reversed until less than a minute before the collision, and that she was clearly in fault for not reversing her engines sooner.

Rule 1, Article 18 of the regulations for Inland Waters for steam craft provides for passing signals for vessels approaching nearly head on. Rule 3 of this article provides:

"If, when steam-vessels are approaching each other, either vessel *fails to understand the course or intention* of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than

four, of the steam-whistle." (30 Stat. L., 100; 2 Fed. Stat. Ann., 179.)

Rule 5 makes provision for signals by vessels nearing river or channel bends where approaching vessels from the opposite direction cannot be seen, and for signals by vessels moving from their docks, when other boats are liable to be moving towards them. Rule 8 provides for the signals to be used when vessels are running in the same direction and the rear one desires to pass the one ahead. Rule 9 provides:

"The whistle signals provided in the rules under this article, for steam-vessels meeting, passing or overtaking, are never to be used except when steamers are in sight of each other, and *the course and position of each can be determined* in the day time by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow or heavy rainstorms, when vessels cannot so see each other, fog signals only must be given." (30 Stat. L., 101; 2 Fed. Stat. Ann., 179.)

Article 28, set out above, provides for a signal where a steam vessel is going full speed astern and is *in sight* of another vessel.

Rule 3 of the Pilot rules of July 25, 1911, made pursuant to Article 30, Chap. 802, laws of 1890, provides:

"The signals for *passing*, by the blowing of the whistle shall be given and answered by pilots, in compliance with these rules, not only when meeting head and head or nearly so, but at all times. When the steam vessels are in sight of each other when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port. The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking are never to be used except when steamers are in sight of each other and the course and position of each can be determined in the day time by a sight of the vessel itself or by night by seeing its signal lights. In fog, mist, storms, when vessels cannot so see each other fog signals only must be given." Under these rules, it is the contention of the "VIR-

GINIAN" that she was excused from giving the danger signal required by Rule 3, Article 18, because she could neither see the "STRATHALBYN" or her lights, and that, under such conditions, Rule 9 forbids the giving of any whistle signal; that, by her silence, the "VIRGINIAN" signaled that the "STRATHALBYN" and her lights could not be seen.

By Rule 3, the danger signal is required when "from any cause" either approaching vessel "fails to understand the *course or intention* of the other". Rule 9 forbids whistle signals, unless "the *course and position* of each (vessel) can be determined", by seeing the vessel in the day time, or its lights by night. The italics are the court's.

It is shown that those navigating the "VIRGINIAN" knew a vessel was "approaching" from ahead; that they knew the vessel's "intention", from her whistle, was to pass the "VIRGINIAN" port to port, but, not being able to either see the "approaching" vessel or her lights, they could not understand her "course". It was, therefore, the duty of the "VIRGINIAN" "immediately" and, certainly, not later than the second whistle of the "STRATHALBYN" to give the danger signal, as required by Rule 3.

Article 28 positively directs three whistles by a steam vessel under way whose engines are going full speed astern, when the vessels are in sight of each other. It does not forbid such signals under all circumstances, unless the vessels are in sight of each other. Rule 9, forbidding the use of signal whistles provided in the rules under Article 18, is limited to those signals provided for "steam-vessels meeting, passing or overtaking."

This quoted expression — if standing alone — it might plausibly be argued, contemplates and includes any situation in which vessels are approaching each other; but an examination of the other rules of Article 18 shows clearly that its application is not so broad.

Rule 1 covers steam-vessels "approaching each other head and head", in which case they shall pass port to port, and the proper signal may be given by either for such passing; "but, if the courses are so far on the

starboard of each other as not to be considered as *meeting* head and head", each shall pass on the starboard of the other and either may give the signal therefor. Rule 8 provides for the passing of vessels running in the same direction and provides for the signals for passage of the vessel astern to port and starboard of the vessel ahead. In this rule the following expressions are used:

"the vessel which is astern shall desire to *pass* on the right * * * or if she shall desire to *pass* on the left * * * or if the vessel ahead does not think it safe for the vessel astern to *pass* * * * and under no circumstances shall the vessel astern attempt to *pass* the other."

The word "overtake" or "overtaking" is not used in rule 8; but when the word "passing" is used in Rule 9, which rule is only applicable to "steam-vessels" meeting, passing or overtaking"—it, being separated from the context of Rule VIII., becomes too vague and, therefore, it is clear that the word "overtaking" was added as a synonym, or explanatory of the sense in which the word "passing" was used.

The signals forbidden by Rule 9 are clearly those provided for in Rules 3 and 8 only. It is not meant to decide that the duty to give the special danger signal provided for in Rule 8, where the vessels ahead does not think it safe for the vessel astern to attempt to pass, depends upon whether the course and position of each can be determined by seeing the other or her lights.

If the prohibition of Rule 9 extends to the danger signal, provided for by Rule 3, then the danger signal could never be used, except when the vessels were in sight of each other and the "*course and position* of each could be determined." While Rule 3 makes the failure to understand the "course" or intention of the other vessel a prerequisite to using the danger signal.

If the construction of Rule 9 contended for was adopted, no room would be left for the operation of Rule 3, which depends upon the failure to "understand the course and intention of the other" vessel, while Rule 9 forbids signals, except when the *Course and position* of each can be determined.

Doubtless, the inability of competent and vigilant men on the look out on the "VIRGINIAN" to make out either the "STRATHALBYN" or her lights excused the "VIRGINIAN" for not accepting and answering the port to port passing signal of the "STRATHALBYN", provided for by Rule 1, but it did not relieve her of the duty of "immediately"—being unable to understand the course of the "STRATHALBYN"—sounding the danger signal and reversing. If this signal had been given promptly, the "STRATHALBYN" would, doubtless, have reversed her engine a minute or two sooner and the collision have been averted.

It is concluded that the "VIRGINIAN" was clearly in fault for failure to give the danger signal. It is, therefore, unnecessary to consider further the question of other faults charged against the "VIRGINIAN".

The New York, 175 U. S., 187;

Duluth S.S. Co. v. Pittsburg S.S. Co., 180 Fed. 656.

Both vessels are, therefore, found to be at fault, and the damage will, therefore, be divided.

(Filed Oct. 10, 1914.)

No. 1036.

CONSOLIDATED CASES.

No. 1052.

DECREE.

The above entitled causes having heretofore been consolidated by order of the above entitled court, on March 18, 1912, and proof having been duly taken on behalf of the respective parties herein and returned to this court, and the cause having been heard and submitted to the Honorable Edward E. Cushman, one of the judges of the above entitled court, upon the pleadings and proof and upon the argument of the proctors for the respective parties herein, and the said court having heretofore, on the 10th day of October, 1914, entered and filed its memorandum decision herein, whereby it was found and so ordered and decreed that the collision mentioned in the pleadings in the above entitled cause was due to fault on the part of both the steamship "Strathalbyn" and the steamship "Virginian,"

and that the damages arising therefrom be divided, and the court having directed that interest at the rate of six per cent. (6%) per annum be allowed and figured upon the items of damage and demurrage, and it appearing to the court that the parties hereto have agreed upon the amount of damages sustained by each of said parties by reason of said collision and have filed stipulations herein covering such damage and have agreed upon the amount of interest due on such damages to the 8th day of November, 1915. THEREFORE, in accordance with the stipulations and agreements of the parties aforesaid,

IT IS HEREBY ORDERED that the damages sustained by the libelant, Strathalbyn Steamship Company, Ltd., a corporation, owner of the steamship "Strathalbyn," by reason of said collision, be, and the same hereby are, assessed as follows:

For damages to the steamship "Strathalbyn" and expenses and charges incident thereto, the sum of Eighty-six Thousand Seventy Two and 05/100 Dollars (\$86,072.05), and for interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Eighteen Thousand Four Hundred Eight and 03/100 Dollars (\$18,408.03); and for demurrage of said steamship "Strathalbyn" Fourteen Thousand One Hundred Forty-seven and 27/100 Dollars (\$14,147.27), and for interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Three Thousand One Hundred Sixty-six and 62/100 Dollars (\$3,166.62); the total of the aforesaid sums amounting to the sum of One Hundred Twenty-one Thousand Seven Hundred Ninety-three and 97/100 Dollars (\$121,793.97); and the sum of Six Hundred Twelve and 39/100 Dollars (\$612.39) and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of One Hundred Thirty-one and 68/100 Dollars (\$131.68), making a total of Seven Hundred Forty-four and 07/100 Dollars (\$744.07), which sum the parties hereto have stipulated and agreed, and it is so ordered, shall be charged solely

against the steamship "Virginian" and her owners, said sum being one-half of the amount paid by the Strathalbyn Steamship Company, Ltd., in settlement of personal injury and baggage claims presented by members of the crew of the steamship "Strathalbyn";

For damages sustained by the steamship "Virginian" and the American-Hawaiian Steamship Company, a corporation, as owner of said steamship, the sum of Twenty-five Thousand Two Hundred Fifty-seven and 96/100 Dollars (\$25,257.96), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of Five Thousand Eighty-eight and 32/100 Dollars (\$5,088.32); and for demurrage of said steamship "Virginian" the sum of Thirty-one Thousand Nine Hundred Forty-eight and 08/100 Dollars (\$31,948.08), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Seven Thousand Two Hundred Twenty-five and 61/100 Dollars (\$7,225.61), making a total of Thirty-nine Thousand One Hundred Seventy-three and 69/100 Dollars (\$39,173.69); the whole amounting to the sum of Sixty-nine Thousand Five Hundred Nineteen and 97/100 Dollars (\$69,519.97);

For damages sustained by the Strathalbyn Steamship Company, Ltd., a corporation as bailee of a cargo of lumber consisting of 3,563,011 feet and for the use and benefit of the owner and insurers of said cargo, the sum of Six Thousand Eight Hundred Ten and 22/100 Dollars (\$6,810.00), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of One Thousand Three Hundred Ninety-one and 55/100 Dollars (\$1,391.55), the whole amounting to the sum of Eight Thousand Two Hundred One and 77/100 Dollars (\$8,201.77);

AND IT IS FURTHER ORDERED that, in the division of damages, the aforesaid sum of Seven Hundred Forty-four and 07/100 Dollars (\$744.07) for loss of sailors' effects and personal injuries shall not be di-

vided but shall be charged and assessed solely against the steamship "Virginian" and her owners.

The costs of the libelant, Strathalbyn Steamship Company, Ltd., a corporation, having been taxed at the sum of Six Thousand Two Hundred Forty-eight and 92/100 Dollars (\$6,248.92), and the costs of the cross libelant, American-Hawaiian Steamship Company, having been taxed at the sum of Five Thousand One Hundred Fifty-three and No/100 Dollars (\$5,153.00), and the costs of the Strathalbyn Steamship Company, Ltd., as bailee of said cargo, etc., having been taxed at the sum of Fifty-two and 08/100 Dollars (\$52.08).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libelant, Strathalbyn Steamship Company, Ltd., a corporation, do have and recover of and from the American-Hawaiian Steamship Company, a corporation, claimant and cross libelant, and from the American Surety Company, surety on the stipulation filed herein for the release of the steamship "Virginian," one-half of the excess of the amount of damages (excepting the seamen's claims, of Seven Hundred Forty-four and 07/100 Dollars (\$744.07) sustained by it, hereinbefore assessed at One Hundred Twenty-one Thousand Seven Hundred Ninety-three and 97/100 Dollars (\$121,793.97), over and above the damages sustained by the American-Hawaiian Steamship Company, a corporation, claimant and cross libelant, hereinbefore assessed at the sum of Sixty-nine Thousand Five Hundred Nineteen and 97/100 Dollars (\$69,519.97), to-wit, the sum of Twenty-six Thousand One Hundred Thirty-seven Dollars (\$26,137), and, in addition thereto, do have and recover of and from the said American-Hawaiian Steamship Company, a corporation, and the American Surety Company, a corporation, surety, as aforesaid, the sum of Seven Hundred Forty-four and 07/100 Dollars (\$744.07), and, in addition thereto, one-half of the difference between the taxed costs of the Strathalbyn Steamship Company, Limited, a corporation, amounting to Six Thousand Two Hundred and Forty-eight and

92/100 Dollars (\$6,248.92), and the taxed costs of the American-Hawaiian Steamship Company, a corporation, amounting to Five Thousand One Hundred Fifty-three and no/100 Dollars (\$5,153.00), viz., the sum of Five Hundred and Forty-seven and 96/100 Dollars (\$547.96); the total of all said sums amounting to the sum of Twenty-seven Thousand Four Hundred and Twenty-nine and 03/100 Dollars (\$27,429.03); and that execution issue therefor;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, for the use and benefit of the owners and insurers of said cargo, do have and recover of and from the American-Hawaiian Steamship Company, a corporation, claimant of the steamship "Virginian," and the American Surety Company, surety on the stipulation and bond filed in said cause for the release of said vessel, the sum of Eight Thousand Two Hundred One and 77/100 Dollars (\$8,201.77) and its costs, taxed herein at the sum of Fifty-two and 08/100 Dollars (\$52.08), amounting, in all, to the sum of Eight Thousand Two Hundred Fifty-three and 85/100 Dollars (\$8,253.85), and that execution issue therefor provided that execution in favor of the Strathalbyn Steamship Company, Ltd., a corporation now only issue for the amount decreed it, to-wit the sum of Twenty-seven Thousand Four Hundred Twenty-nine and 03/100 Dollars (\$27,429.03) less one half the amount decreed in favor of Strathalbyn Steamship Company, Ltd., a corporation as bailee, that is less the sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars (\$4,126.92) and that execution on such deducted amount be stayed until the time for an appeal herein has expired, that in case such appeal is not taken by Claimant and Cross Libelant, execution then to issue for the remainder, that in case of such appeal, execution be further stayed until the filing of the Mandate from the Appellate Court, then to issue unless, upon appeal, Claimant and cross-libelant has prevailed, obtaining a decree freeing it from responsibility therefor upon pay-

ment by said Claimant and cross-libelant to the Strathalbyn Steamship Company, a corporation, as bailee, of the amount herein decreed, execution by Strathalbyn Steamship Company, Ltd., a corporation, for such deducted amount to-wit the said sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars (\$4,126.92) shall be perpetually stayed, or judgment satisfied. Interest is allowed at the rate of six per cent. (6%) per annum during any delay the parties hereto having stipulated that interest in this decree shall run from the 8th day of November, 1915,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this judgment shall bear interest from the 8th day of November, 1915, at the rate of six per cent. (6%) per annum until paid.

Done in open court this 26th day of November, 1915.

EDWARD E. CUSHMAN, Judge
(Filed Nov. 26, 1915.)

NOTICE OF FILING FINAL DECREE.

To STRATHALBYN STEAMSHIP COMPANY, a corporation,
Libelant in Cause No. 1036, and to
HUFFER & HAYDEN, its Proctors herein;

To STRATHALBYN STEAMSHIP COMPANY, a corporation,
as bailee of a cargo, etc., Libelant in Cause No.
1052, and to
BALLINGER, BATTLE, HULBERT & SHORTS, its
Proctors herein:

YOU, AND EACH OF YOU, WILL HEREBY TAKE NOTICE that the final decree of the above court in the above entitled Consolidated Causes was made and filed herein on the 26th day of November, 1915.

DATED at Seattle, Washington, November 26th, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian
Steamship Company, Claimant and
Cross-Libelant.

Service of within Notice and receipt of a copy thereof admitted, this 26th day of November, 1915.

HUFFER & HAYDEN,

Proctors for Strathalbyn Steamship
Co., Ltd.,

BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship
Company, Ltd., as bailee of cargo.

(Filed Dec. 4, 1915.)

No. 1036.

CONSOLIDATED CASES.

No. 1052.

NOTICE OF APPEAL.

To STRATHALBYN STEAMSHIP COMPANY, a corporation, Libelant in Cause No. 1036, and to NATIONAL SURETY COMPANY, a corporation, Stipulator for release of the Steamship "Strathalbyn," and to HUFFER & HAYDEN, Proctors for said Libelant; and

To STRATHALBYN STEAMSHIP COMPANY, a corporation, as bailee of a Cargo, etc., Libelant in Cause No. 1052, and to BALLINGER, BATTLE, HULBERT, & SHORTS, Proctors for said Libelant; and

To the Clerk of the Above Court:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libelant in Cause No. 1036,, and claimant in Cause No. 1052, hereby appeals from the final decree made and entered in the above Consolidated Causes on the 26th day of November, 1915, and from each and every part of said decree, to the next United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, State of California.

DATED at Seattle, Washington, November 26th, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American - Hawaiian
Steamship Company, Claimant and
Cross-Libellant.

(Filed Nov. 26, 1915.)

Due service of the foregoing notice of appeal, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted this 26th day of November, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship
Company, Libellant,
BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship
Company, as bailee of a cargo above
Libellant.

In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.

No. 1036.

CONSOLIDATED CASES

STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, Libellant,

vs.

Steamship "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines, Respondent,
AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corpo-
ration, Claimant and Cross Libellant,
STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, Claimant.

NO. 1052.

CITATION ON APPEAL.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, as bailee of a cargo of lumber con-
sisting of 3,563,011 feet, and for the use
and benefit of the owner and insurers of
said cargo, Libellant,

vs.

Steamship "VIRGINIAN," her tackle, apparel, furniture,
 boilers and engines, Respondent,
 AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corpo-
 ration, Claimant and Petitioner,
 Steamship "STRATHALBYN," her tackle, apparel, furni-
 ture, etc., Respondent,
 STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
 tion, Claimant.

United States of America, Western District of Wash-
 ington.—ss.

THE PRESIDENT OF THE UNITED STATES

To Strathalbyn Steamship Company, Ltd., a cor-
 poration, libelant in Cause 1036, and to Messrs. HUFFER
 & HAYDEN, its proctors herein; and to Strathalbyn
 Steamship Company, Ltd., a corporation, as bailee of a
 cargo, etc., libelant in Cause 1052, and to Ballinger,
 Battle, Hulbert & Shorts, its proctors herein, GREETING:

YOU AND EACH OF YOU ARE HEREBY CITED AND AD-
 MONISHED to be and appear before the United States
 Circuit Court of Appeals for the Ninth Circuit, in the
 City of San Francisco, State of California, within thirty
 (30) days from the date hereof, pursuant to an appeal
 to the said court duly filed in the office of the Clerk of
 the United States District Court for the Western Dis-
 trict of Washington, Southern Division, wherein the
 said American-Hawaiian Steamship Company, a cor-
 poration, is appellant, and you, the said Strathalbyn
 Steamship Company, Ltd., a corporation, and Strath-
 albyn Steamship Company, Ltd., a corporation, as bailee
 of a cargo etc., are appellees, then and there to show
 cause, if any there be, why the decree of the United
 States District Court for the Western District of Wash-
 ington, Southern Division, in the above entitled consoli-
 dated causes, dated November 26, 1915, should not be
 corrected, and why speedy justice should not be done
 to the parties in that behalf.

WITNESS, the Honorable Edward Douglas White,
 Chief Justice of the Supreme Court of the United States

of America, this 4th day of December, 1915.

EDWARD E. CUSHMAN,
Judge of the United States District Court for the
Western District of Washington.

(SEAL OF U. S. DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.)

Due service of the within citation, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted on this 4th day of December, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship
Company, Ltd., a corporation,
MCCUTCHEON, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship
Company, Ltd., a corporation, as bailee
of cargo, etc.

(Endorsed) :—

“Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division, Dec. 4, 1915.

FRANK L. CROSBY, Clerk.

By E. C. Ellington, Deputy.

NO. 1036.

NO. 1052.

ORDER FIXING AMOUNT OF BOND ON APPEAL STAYING EXECUTION.

A decree having been signed and entered in the above entitled Consolidated Causes by the above Court, on the 26th day of November, 1915, wherein and whereby it was decreed that the collision mentioned in the pleadings herein resulted from the mutual fault of the Steamship “Strathalbyn” and the Steamship “Virginian”, and that the damages resulting therefrom should be divided, and upon such division decreeing that the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, bailee, Libelant in Cause 1052, should have and recover from American-Hawaiian Steamship

Company, claimant, the sum of Eight Thousand Two Hundred One and 77/100 Dollars (\$8,201.77), and its costs amounting to Fifty-two and 08/100 Dollars (\$52.08), and further decreeing that Strathalbyn Steamship Company, Ltd., a corporation, Libelant in Cause No. 1036, have and recover from said American-Hawaiian Steamship Company, Claimant and Cross-Libelant, the sum of Twenty-seven Thousand Four Hundred and Twenty-nine and 03/100 Dollars (\$27,429.03), and providing that execution in favor of said Strathalbyn Steamship Company, Ltd., a corporation, should now only issue for said amount, less the sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars (\$4,126.92), being one-half the amount decreed in favor of the Strathalbyn Steamship Company, as bailee, and that execution for such deducted amount be stayed until time for appeal has expired, or, in case of appeal, until mandate of the Appellate Court is filed in this Court, unless Claimant and Cross-Libelant prevails upon such appeal; and further providing that upon payment to the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of the full amount decreed to it, execution in favor of Strathalbyn Steamship Company, Ltd., a corporation, for such deducted amount be perpetually stayed or judgment satisfied; and the said American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, by filing in the office of the Clerk of the above entitled Court and serving on proctors for the adverse parties in the above causes, a notice, signed by it, that it appeals to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, and said American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, desiring to stay the execution of the said decree, and having by its proctors of record moved this Court to fix by order the amount of the bond which it should file as a bond on appeal staying the execution of said decree, and it appearing that said claimant and cross-libelant

in Cause No. 1036, has heretofore given and filed a bond in said cause in the sum of One Hundred and Seventy-five Thousand Dollars (\$175,000) for the release of said Steamship "Virginian," and that said claimant in Cause No. 1052 has heretofore given and filed a bond in said cause in the sum of Ten Thousand Dollars (\$10,000) for the release of said steamship "Virginian," and the Court being of the opinion that a further bond in the sum of One Thousand and no/100 Dollars (\$1,000.00) is sufficient upon such appeal, as a cost bond and to operate as a supersedeas to stay execution of said decree in the above consolidated causes;

NOW, IT IS HEREBY ORDERED and DECREED that the appeal bond to be given on such appeal be and the same is hereby fixed at the sum of One Thousand and no/100 Dollars (\$1,000.00), which bond shall operate as a supersedeas in said cause.

Done in open Court this 26th day of November, 1915.

EDWARD E. CUSHMAN,
Judge.

(Filed Dec. 4, 1915.)

No. 1036.

No. 1052.

CONSOLIDATED CASES.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, American-Hawaiian Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and American Surety Company, of New York, a corporation duly organized under the laws of the State of New York and authorized to transact business as surety within the Western District of the State of Washington, as surety, are held and firmly bound unto Strathalbyn Steamship Company, Ltd., a corporation, libelant above named in Cause 1036, and unto Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, etc., libelant above named in Cause No. 1052, in the sum of One Thousand and

no/100 Dollars (\$1,000), lawful money of the United States, to be paid to said Strathalbyn Steamship Company, Ltd., a corporation, libelant in Cause 1036, and to Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, libelant in Cause 1052, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Seattle this 29th day of November, 1915.

WHEREAS, the said American-Hawaiian Steamship Company, a corporation, principal herein, has lately appealed to the next United States Circuit Court of Appeals for the Ninth Circuit from the final decree made and entered in the above entitled court on the 26th day of November, 1915, in the above entitled consolidated causes; and

WHEREAS, the said American-Hawaiian Steamship Company, a corporation, principal herein and claimant and cross-libelant in the above entitled consolidated causes, desires, during the process of such appeal, to stay the execution of said decree of the above entitled court in the said consolidated causes; and

WHEREAS, the said court has heretofore fixed the amount of the bond on such appeal in order to stay the execution of said decree;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above named American-Hawaiian Steamship Company, a corporation, appellant in said cause, and principal herein, shall prosecute said appeal to effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled consolidated causes or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above entitled court, then this obligation shall be void; otherwise the same to be and remain in full force and effect.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,
By C. K. Magill, Agent.

AMERICAN SURETY COMPANY OF NEW YORK,
By Edward J. Lyons, Resident Vice President.
S. H. Melrose, Resident Assistant Secretary.

The foregoing bond approved as to form, amount and sufficiency of surety, and receipt of a copy of said bond acknowledged this 30th day of November, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Co.
BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship
Company, as bailee of cargo, etc.

The foregoing bond and the sufficiency of the surety thereon is on this 4th day of December, 1915, approved as an appeal and supersedeas bond.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed Dec. 4, 1915.)

NOTICE OF FILING BOND ON APPEAL.

To STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant in Cause No. 1036 and Claimant in Cause 1052, and

To HUFFER & HAYDEN, its Proctors herein, and

To STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation as bailee of cargo, Libelant in Cause No. 1052, and

To BALLINGER, BATTLE, HULBERT & SHORTS, its proctors herein:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 4th day of December, 1915, the American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and Claimant in Cause No. 1052, and appellant, filed a bond for costs and damages on appeal herein in the sum of Two Hundred and Fifty Dollars (\$250.00), and a supersedeas bond for stay of execution in the sum of Seven Hundred and Fifty Dollars (\$750.00), both in one bond, pursuant to order of the above Court, in the office of the Clerk of the United States District Court for the Western District

of Washington, Southern Division, at Tacoma, a copy of which bonds is herewith served upon you. You are further notified that the name of the surety on said bonds is American Surety Company of New York, which said surety has an office and resident agent in the Hoge Building, Seattle.

Dated at Seattle, Washington, this 4th day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Claimant, Cross-Libelant and Appellant.
(Acceptance of service.)
(Filed Dec. 9, 1915.)

No. 1036.

No. 1052.

ASSIGNMENT OF ERRORS.

Now comes the AMERICAN - HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, and appellant herein, and says that in the records, opinions, decisions, decree and proceedings in the above consolidated causes, there is manifest and material error, and said appellant now makes, files and presents the following ASSIGNMENT OF ERRORS on which it relies, to wit:

1. That the Court erred in finding and decreeing that the collision mentioned in the pleadings herein between the S. S. "Virginian" and the S. S. "Strathalbyn", resulted from or was caused by the mutual fault of said S. S. "Virginian" and said S. S. "Strathalbyn," and in refusing to find and decree that said collision resulted from the sole fault and negligence of the said S. S. "Strathalbyn".

2. That the Court erred in finding and decreeing that in said causes the damages resulting from the collision mentioned in the pleadings should be divided.

3. That the Court erred in refusing to allow, award and decree to claimant and cross-libelant in Cause No. 1036 the full amount of damages sustained by it as the result of the collision between the said S. S. "Virginian" and the said S. S. "Strathalbyn", together with

interest thereon, and its costs in said suit, as prayed for in its said cross-libel.

4. That the Court erred in finding that the engines of the "Virginian" were not reversed until less than a minute before the collision.

5. That the Court erred in finding that the "Virginian" was in fault for not reversing her engines sooner.

6. The Court erred in holding that the failure of the "Virginian" to reverse her engines sooner in any way caused or contributed to the collision between the "Virginian" and the "Strathalbyn".

7. The Court erred in finding that the "Virginian" should have blown a danger signal.

8. The Court erred in holding that the failure of the "Virginian" to give a danger signal caused or in any way contributed to the collision between the "Virginian" and the "Strathalbyn".

9. The Court erred in refusing to hold that the burden of proof was upon the "Strathalbyn" to show that her fault was not the sole cause of said collision.

10. The Court erred in allowing the "Strathalbyn" Steamship Company, Ltd., libelant in Cause No. 1036, interest on its damages and costs in said suit.

11. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, interest on its damages and costs in said suit.

12. The Court erred in refusing to dismiss Case No. 1052.

13. The Court erred in allowing and decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, recover from American-Hawaiian Steamship Company, claimant, the full amount of its damages, or any portion thereof.

14. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., libelant in Cause No. 1036, one-half of the difference between its excess damages over the damages sustained by claimant and cross-libelant, and refusing to deduct therefrom one-half of the amount decreed to the "Strathalbyn Steamship Com-

pany, Ltd., as bailee of cargo, against the American-Hawaiian Steamship Company, claimant in Cause No. 1052.

15. The Court erred in decreeing and allowing immediate execution against American-Hawaiian Steamship Company and its surety for the amount decreed in favor of libelant in Cause No. 1036, to wit, the sum of Twenty-seven Thousand four hundred twenty-nine and 03/100 Dollars (\$27,429.03), less one-half the amount decreed in favor of libelant in Cause No. 1052, against the American-Hawaiian Steamship Company, to wit, \$4,126.92.

16. The Court erred in holding that execution on said deducted amount of \$4,126.92 should be stayed until time of appeal had expired, and that in case such appeal was not taken by said claimant and cross-libelant, execution should then issue for the remainder.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant and Cross-Libelant.

(Filed Dec. 4, 1915.)

No. 1036.

No. 1052.

STIPULATION AND ORDER AS TO RECORD.

IT IS HEREBY STIPULATED, by and between the parties hereto, through their respective proctors, that all exhibits introduced in the above entitled consolidated causes and in the depositions taken in said causes, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as original exhibits with the Apostles on Appeal; and

IT IS FURTHER STIPULATED that in preparing said Apostles on Appeal, all captions, except the name of the paper and the number of the cause, except where specially noted in the Præcipe for Apostles on Appeal, and all verifications and all certificates of the United States Commissioner to testimony of witnesses, and all certificates of the Notary Public or other officer or official to all depositions taken, and also stipulation with reference to taking such depositions, may be omitted; and that all stipulations as to damages and testi-

mony as to damages, whether taken before a United States Commissioner, Notary Public or other official, may be omitted; and, further, that all endorsements, except to show the name of the paper and the date of filing, shall be eliminated, and all acceptances of service of papers shall be omitted.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for American-Hawaiian Steamship Company, a corporation, claimant and cross libellant in Cause 1036 and claimant in Cause 1052.

HUFFER & HAYDEN,

Proctors for Strathalbyn Steamship Company, Ltd., a corporation, Libellant and Claimant in Cause 1036 and Claimant in Cause 1052.

BALLINGER, BATTLE, HURLBURT & SHORTS,

Proctors for Strathalbyn Steamship Company, Ltd., a corporation, as bailee, etc., Libellant in Cause 1052.

Upon reading the foregoing stipulation as to the record on appeal in this case, IT IS ORDERED that said record be so prepared and filed.

EDWARD E. CUSHMAN,

Judge.

(Filed Nov. 26, 1915.)

NO. 1036 AND 1052—CONSOLIDATED CASES.

PRAECIPE FOR APOSTLES ON APPEAL.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare, print and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal in the above entitled cause, pursuant to the rules of said Circuit Court of Appeals, upon the appeal heretofore perfected in said court, and include in said Apostles the following pleadings, proceedings and papers on file, to-wit:

1. All those papers required by Section 1 of paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit:

2. All the pleadings with the exhibits annexed thereto, omitting therefrom all verifications, endorsements, acceptances of service, and captions, except the name of the paper, date of filing and number of the cause, except as herein specially noted, including the following, to-wit:

- (a) Libel of Strathalbyn Steamship Company, Ltd., in Cause No. 1036, filed January 15, 1912, including full caption.
- (b) Answer and Cross-Libel of American-Hawaiian Steamship Company, in Cause No. 1036, filed January 19, 1912.
- (c) Answer of Strathalbyn Steamship Company, Ltd., to Cross-Libel in Cause No. 1036, filed February 11, 1912.
- (d) Libel of Strathalbyn Steamship Company, Ltd., as bailee of cargo, etc., in Cause No. 1052, filed February 8, 1912, including full caption.
- (e) Motion of American-Hawaiian Steamship Company in Cause No. 1052, filed February 26, 1912.
- (f) Memorandum Decision in Cause No. 1052, filed March 7, 1912
- (g) Order consolidating Causes 1036 and 1052, on March 18, 1912, with full caption.
- (h) Petition of American-Hawaiian Steamship Company in Cause No. 1052, on March 13, 1912.
- (i) Stipulation as to answer of American-Hawaiian Steamship Company in Cause No. 1052, on December 4, 1915.
- (j) Answer of Strathalbyn Steamship Company, Ltd., to Petition in Cause No. 1052, on March 20, 1912.
- (k) Answer of Strathalbyn Steamship Company, Ltd., to Libel in Cause No. 1052, on March 18, 1914.

3. All the testimony and other proofs adduced in said causes, or either of them, including testimony taken at the trial and before the United States Commissioner and filed herein, and all depositions taken

by either party and admitted in evidence; excepting and omitting therefrom all testimony relating solely to damages, such testimony being:

Testimony of George T. Crerar, J. Purdy and J. Sandelands, taken before U. S. Commissioner March 19, 1912, and filed December 10, 1912.

Portion of depositions of George T. Crerar, John Purdie and John B. Bodie, taken before U. S. Consul, Glasgow, Scotland, March 6, 1913, and filed March 29, 1913, as follows:

Crerar's deposition, direct-interrogatories 26 to 52, inclusive, and answers thereto, and cross-interrogatories 66 to 71, inclusive, and answers thereto.

Purdie's deposition, direct-interrogatories 28 to 34, inclusive, and answers thereto.

John B. Bodie's deposition—all of said deposition.

Deposition of V. H. Thun, taken before Alan Fox, Notary Public, New York City, on May 10, 1915, and filed June 5, 1915.

All exhibits introduced by either party and admitted in evidence, viz:

Libellant's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "S," "T," attached to testimony taken before U. S. Commissioner and filed herein December 10, 1912; "U1" and "U2" attached to deposition of F. Walker, taken October 28, 1912; "V1," "V2" and "V3" attached to deposition of Erisman, taken December 9, 1912; "S1," "S2," "S3," "S4," "S5," "S-S" and "W" attached to deposition of George T. Crerar et al., taken at Glasgow, Scotland, March 6, 1913; "X13," "X14," "X15," "X16," "X17," "X18," "X19," attached to deposition of C. P. M. Jack, taken at New York City, January 14, 1913; "C-V-1" to "C-V-16" inclusive, attached to deposition of John Cameron, taken at Victoria, B. C., September 30, 1913; "Z1" and "Z2" attached to deposition of C. W. Sprague, taken April 25, 1914; "F. A. G. 1" to "F. A. G. 6," inclusive, attached to deposition of F. A. Gardner, taken December 4, 1913; "McIntyre A,"

"Leach A," and "Leach B" attached to testimony taken before U. S. Commissioner and returned and filed herein May 28, 1914; "Libelant's Ex." 6, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20," "Libelant's Exhibit Identification 1, 2, 3, 4, 5" and "329-E," "330-E" and "Strathalbyn" 1 to 9 inclusive, all attached to deposition of David W Dickie, taken April 10, 1914. "Lee-1," "Lee-2-A" and "Lee 2" to "Lee 18" inclusive attached to testimony taken before U. S. Commissioner and filed herein May 28, 1914; Stipulation with Strathalbyn's Charter Party and Bill of Lading attached, dated October 28, 1915, filed November 1, 1915, and Stipulation with Strathalbyn's log log-book and pilot-rules attached, filed May 29, 1914. Respondent's and Claimant's Exhibits 1, 2, 3 and 4, attached to testimony returned by U. S. Commissioner and filed herein December 10, 1912; "5-1" attached to deposition of A. E. Draper taken Sept. 20, 1912; "5-2," "5-3," "5-4," "5-5" attached to deposition of F. Walker, taken October 28, 1912; "5-6" attached to deposition of M. C. Erisman, taken December 9, 1912; "Caper Exs. A, B, C, D, E, F, G," attached to deposition of R. E. Capers, taken December 24, 1912; "Hofstetter No. 1," "Leach No. 2," "Beaumont No. 1 and 2" and "Lee A" attached to testimony taken before U. S. Commissioner and returned May 28, 1914.

and all of these to be sent up to said United States Circuit Court of Appeals as original exhibits, and where any of said exhibits are attached to interrogatories or depositions, the same are to be detached therefrom and sent up to said Court as original Exhibits, all in accordance with order of the above Court entered and filed November 26th, 1915.

All the exhibits introduced by either party, except those enumerated above, relate solely to damages and are not to be either printed or sent up to said Court.

4. Memorandum Decision, filed October 10, 1914.
5. Final Decree, filed November 26, 1915.
6. Notice of filing final decree.

7. Notice of Appeal with admission of service thereof, filed November 26, 1915.

8. Order fixing amount of Bond on Appeal.

9. Bond on Appeal and Notice of filing of Bond on Appeal.

10. Citation on Appeal.

11. Stipulation and Order as to Record on Appeal and transmitting original exhibits.

12. Assignment of Errors.

13. This Praecipe for Apostles on Appeal.

DATED at Seattle, Washington, this 1st day of December, 1915.

BOGLE, GRAVES, MERRITT, BOGLE,
Proctors for American-Hawai-
ian Steamship Company, Claim-
ant and Cross-Libelant.

(Filed Dec. 4, 1915.)

In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.

NO. 1036, NO. 1052—CONSOLIDATED CASES.
STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, Libelant, Appellee and Cross-Appel-
lant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corpora-
tion, Claimant and Cross-Libelant, Ap-
pellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corpora-
tion, as bailee of a cargo of lumber con-
sisting of 3,563,011 feet, and for the use
and benefit of the owner and insurers of
said cargo, Libelant and Appellee and
Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corpora-

ation, Claimant and Petitioner, and Appellant and Cross-Appellee,
 STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,
 STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, Appellee and Cross-Appellant,

ORDER EXTENDING TIME FOR TRANSCRIPT.

For good cause shown,

IT IS HEREBY ORDERED that the time within which the record on appeal in the above entitled cause may be filed is hereby extended to and including the 7th day of January, 1916.

December 27, 1915.

EDWARD E. CUSHMAN,
 District Judge.

(Filed Dec. 27, 1915.)

CERTIFICATE OF CLERK U. S. DISTRICT COURT AS TO TRANSCRIPT OF RECORD AS REQUIRED BY PRAECIPE OF APPELLANT.

United States of America, Western District of Washington, ss.

I, FRANK L. CROSBY, Clerk of the United States District Court of the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 1 to ¹⁴⁵⁶ inclusive, contain a full, true and correct transcript of the record on appeal in the case of STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as Bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libellant, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and Steamship "STRATHALBYN," her tackle, apparel, furni-

ture, etc., STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, lately pending in this court, as required by the praecipe of Messrs. Bogle, Graves, Merritt & Bogle, solicitors for the appellant, filed in said cause, as the originals thereof appear on file in this court, at the City of Tacoma, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original citation of appellant and Order extending time for transcript on appeal.

I further certify that I am transmitting under separate cover and certificate the original exhibits in these causes as required by the stipulation of counsel filed herein.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the appellant, by its solicitors, Messrs. Bogle, Graves, Merritt & Bogle, for making the record, certificate and return to the United States Circuit Court of Appeals, for the Ninth Circuit, in the above entitled cause, to-wit: Clerk's fees (Sec. 828 R. S. U. S.) for making

record, certificate and return, <i>4926</i>	
folios at 15c each.....	\$ <i>738.90</i>
Certificate of Clerk to transcript, 4 fo. at 15c.....	.60
Seal to said certificate to transcript.....	.20
Certificate and seal to appellant's exhibits, 2 fo.	.50
Certificate and seal to appellees' exhibits, 2 fo.	.50
Statement of cost of printing appellant's transcript of record, collected and paid by the solicitors for appellant, Messrs. Bogle, Graves, Merritt & Bogle.....	<i>12 60.55</i>
ATTEST MY HAND AND THE SEAL OF	
THIS COURT, this <i>3rd</i> day of January, 1916.	
(Seal)	FRANK L. CROSBY, Clerk.
	By E. C. ELLINGTON, Deputy Clerk.

In the United States Circuit Court of Appeals for the
Ninth Judicial Circuit.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,
Libellant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
Claimant and Cross-Libellant, Appellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,
Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,
as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use
and benefit of the owner and insurers of said cargo, Libellant and Appellee and
Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
Claimant and Petitioner, and Appellant and Cross Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture,
etc., Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,
Claimant, Appellee and Cross-Appellant.

TRANSCRIPT OF RECORD

Of Cross Appeal From the United States District Court
for the Western District of Washington,
Southern Division.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant, Appellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libelant and Appellee and Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner, and Appellant and Cross-Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, Appellee and Cross-Appellant.

NOS. 1036-1052. CONSOLIDATED CASES.

NOTICE OF APPEAL.

TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant in Cause No. 1036, and to AMERICAN SURETY COMPANY OF NEW YORK, a corporation, surety for release of the Steamship "Virginian," and to the AMERICAN-HAWAIIAN STEAMSHIP COMPANY as Claimant and Petitioner in Cause 1052, and to the AMERICAN SURETY COMPANY OF NEW YORK, a corporation, stipulator for the release of the Steamship "Virginian," and to BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for said Claimant and Cross-Libelant;
and

To STRATHALBYN STEAMSHIP COMPANY, a corporation,
as bailee of a Cargo, etc., Libelant in Cause No.
1052, and to BALLINGER, BATTLE, HULBERT &
SHORTS, Proctors for said Libelant; and

To the Clerk of the Above Court:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, libelant and claimant in Cause No. 1036, and claimant in Cause No. 1052, hereby appeals from the final decree made and entered in the above Consolidated Causes on the 26th day of November, 1915, and from each and every part of said decree, to the next United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, State of California.

DATED at Tacoma, Washington, December 23rd, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Company, Ltd., Libelant and Claimant.

(Filed Dec. 23, 1915.)

ASSIGNMENTS OF ERROR.

Comes now the STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, libelant and claimant in cause No. 1036 and claimant in cause No. 1052 and cross-appellant herein and hereby assigns errors in the records, opinion, decision, decree and proceedings of the District Court in the above consolidated causes as follows:

I.

That the court erred in finding and decreeing that the collision mentioned in the pleadings herein between the steamship "Virginian" and the steamship "Strathalbyn" resulted from, or was caused by the mutual fault of the steamship "Virginian" and said steamship "Strathalbyn," and in refusing to find and decree that said collision resulted from the sole fault and negligence of the steamship "Virginian."

II.

That the court erred in finding and decreeing that, in said causes, the damages to the steamer, demurrage and layup expenses and matters of such nature resulting from the collision mentioned in the pleadings, and costs, should be divided.

III.

That the court erred in refusing to allow, award and decree to the Strathalbyn Steamship Company, Ltd., a corporation, libelant and claimant in cause No. 1036, the full amount of damages sustained by it as the result of the collision between said steamer and the steamer "Virginian," together with interest thereon and its costs of said suit as prayed for in the libel herein.

IV.

That the court erred in finding the lights of the steamer "Strathalbyn" were not properly set and burning and visible to the "Virginian."

V.

That the court erred in finding the angle of the approach of the "Strathalbyn" and the "Virginian" was such that the red light of the "Strathalbyn" was not visible to the "Virginian," and that it was hidden from the "Virginian" during the time the "Strathalbyn" was signalling to the "Virginian."

VI.

That the court erred in giving more weight to the negative testimony of the witnesses that they did not see the lights of the "Strathalbyn" than to the positive testimony of witnesses that the lights of the "Strathalbyn" were visible from directly ahead prior to, at the time of, and after the collision.

VII.

That the court erred in finding that the stanchions holding the cargo on the "Strathalbyn's" forward deck did not tumble home and lean inboard from a perpendicular position, and that the port light could not be seen by sailors aboard the "Strathalbyn" from the deck of the "Strathalbyn" through the spaces between the stanchions.

VIII.

That the court erred in finding that the stanchions holding said deck cargo of lumber on the "Strathalbyn" leaned outboard slightly instead of inboard at the time of the collision.

IX.

That the court erred in finding that the stanchions obstructed the rays of the port light of the "Strathalbyn" so that the same could not have been seen on the "Virginian" from the angles at which the steamers were approaching during the time the "Strathalbyn" was signalling to the "Virginian."

X.

That the court erred in finding that the "Flyer," in overhauling and passing the "Virginian" at Pully Point, when abeam, was two hundred (200) yards away from her.

XI.

That the court erred in finding that, because the rays of light from the side light shone upon the stanchions holding the forward deck cargo on the "Strathalbyn," the light was so obstructed at a point directly ahead that it was not visible from the "Virginian."

XII.

That the court erred in finding that the "Strathalbyn" and "Virginian" were on like courses and struck head and head at the time of the collision.

XIII.

That the court erred in finding the "Virginian" was not at fault in failing to observe the mast-head light of the "Strathalbyn" during the time the "Strathalbyn" was signalling to the "Virginian."

XIV.

That the court erred in finding and decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of the cargo of lumber recover more than one-half of the cargo damage and costs in the consolidated causes.

XV.

That the court erred in decreeing that the Strathalbyn Steamship Company, Ltd., libelant in cause No. 1036, be required to recoup the American-Hawaiian Steamship Company, claimant and cross-libelant in said

cause 1036, for one-half of the cargo damage and costs decreed to be due the Strathalbyn Steamship Company, Ltd., as bailee, in cause No. 1052.

XVI.

That the court erred in failing to find and decree that the charter party made and entered into between the charterer of the "Strathalbyn" and cargo owners saved and protected the "Strathalbyn" against the claim of the charterer and cargo owner from any loss or damage resulting from collision.

Dated, Tacoma, Washington, December 23, 1915.

HUFFER & HAYDEN,

Proctors for Strathalbyn Steamship Company, Ltd., a Corporation, Libelant and Claimant.

(Filed Dec. 23, 1915.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, Strathalbyn Steamship Company, Ltd., a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, as principal, and United States Fidelity & Guaranty Company, a corporation duly organized under the laws of the State of Maryland and authorized to transact business, as surety, within the Western District of the State of Washington, as surety, are held and firmly bound unto American-Hawaiian Steamship Company, a corporation, claimant above named in Cause 1036, and unto Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, etc., libelant above named in Cause No. 1052, in the sum of One Thousand and no/100 Dollars (\$1000), lawful money of the United States, to be paid to said American-Hawaiian Steamship Company, a corporation, libelant in Cause 1036, and to Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, libelant in Cause 1052, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Tacoma this 23rd day of December, 1915.

WHEREAS, the said Strathalbyn Steamship Company, Ltd., a corporation, principal herein, has lately cross appealed to the next United States Circuit Court of Appeals for the Ninth Circuit from the final decree made and entered in the above entitled court on the 26th day of November, 1915, in the above entitled consolidated causes; and

WHEREAS, the said Strathalbyn Steamship Company, Ltd., a corporation, principal herein and libellant and claimant in the above entitled consolidated causes, desires, during the process of such appeal, to stay the execution of said decree of the above entitled court in the said consolidated causes; and,

WHEREAS, the said court has heretofore fixed the amount of the bond on such appeal in order to stay the execution of said decree;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above named Strathalbyn Steamship Company, Ltd., a corporation, cross-appellant in said cause, and principal herein, shall prosecute said appeal to effect and pay all costs which may be awarded against it as such cross-appellant, if the cross appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled consolidated causes or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above entitled court, then this obligation shall be void; otherwise the same to be and remain in full force and effect.

STRATHALBYN STEAMSHIP COMPANY, LTD.,

By HUFFER & HAYDEN, By W. H. HAYDEN,
(Seal.) Its Proctors and Attorneys.

UNITED STATES FIDELITY & GUARANTY COMPANY,
a Corporation,

By HARRY C. MILLER, Attorney in Fact.

(5c rev. stamps.) Stamp tax paid by Company.

The foregoing bond approved as to form, amount and sufficiency of surety, and receipt of a copy of said

bond acknowledged this 23rd day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian
Steamship Company.

MCCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship
Company, as Bailee of Cargo, Etc.

The foregoing bond and the sufficiency of the surety thereon is on this 23rd day of December, 1915, approved as an appeal and supersedeas bond.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed Dec. 23, 1915.)

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

NO. 1036—CONSOLIDATED CASES.

NO. 1052—CITATION ON APPEAL.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corpora-
tion, Libelant, Appellee and Cross-Appellant,
vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furni-
ture, boilers and engines, Respondent,
AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a cor-
poration,

Claimant and Cross Libelant,
Appellant and Cross-Appellee,

STRATHALBYN STAMSHIP COMPANY, LTD., a corpora-
tion,

Claimant and Cross-Appellant,
STRATHALBYN STAMSHIP COMPANY, LTD., a corpora-
tion, as bailee of a cargo of lumber consisting of
3,563,011 feet, and for the use and benefit of the
owner and insurers of said cargo,

Libelant and Appellee and Cross-Appellee,
vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture,
boilers and engines,
Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Claimant and Petitioner, and
Appellant and Cross-Appellee,
STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc.,

Respondent,
STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,

Claimant, Appellee and Cross-Appellant.

United States of America, Western District of Washington, ss.

THE PRESIDENT OF THE UNITED STATES TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libellant in cause 1036, and to MESSRS. BOGLE, GRAVES, MERRITT & BOGLE, its proctors herein; and to STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo, etc., libelant in Cause 1052, and to BALLINGER, BATTLE, HULBERT & SHORTS, its proctors herein, GREETING:

YOU AND EACH OF YOU ARE HEREBY CITED AND ADMONISHED to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an appeal to the said court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein the said Strathalbyn Steamship Company, Ltd., a corporation, is cross-appellant, and you, the said American-Hawaiian Steamship Company, a corporation, and Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo, etc., are appellees, then and there to show cause, if any there be, why the decree of the United States District Court for the Western District of Washington, Southern Division, in the above entitled consolidated causes, dated November 26, 1915, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 23rd day of December, 1915.

(Seal.)

EDWARD E. CUSHMAN,

Judge of the United States District Court
for the Western District of Washington.

Due service of the within citation, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted on this 23rd day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian
Steamship Company above mentioned.
McCUTCHEON, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship
Company, Ltd., a corporation, as bailee
of cargo, etc.

(Filed Dec. 23, 1915.)

CERTIFICATE OF CLERK U. S. DISTRICT
COURT AS TO TRANSCRIPT OF RECORD
AS REQUIRED BY PRAECIPE OF CROSS
APPELLANT HEREIN.

United States of America, Western District of Wash-
ington, ss.

I, FRANK L. CROSBY, Clerk of the United States District Court of the Western District of Washington, do hereby certify and return that the foregoing pages numbered from ¹⁴⁵⁹~~1459~~ to ¹⁴⁶⁸~~1468~~ inclusive, contain a full, true and correct transcript of the record on cross appeal in the case of STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as Bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libellant, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and en-

gines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and Steamship "STRATHALBYN," her tackle, apparel, furniture, etc., STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, lately pending in this court, as required by the praecipe of Messrs. Huffer & Hayden, solicitors for the cross appellant, filed in said cause, as the originals thereof appear on file in this court, at the City of Tacoma, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original Citation on the cross appeal herein. The original exhibits have already been transmitted on the direct appeal.

I further certify that the following is a full, true and correct statement of all statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the cross appellant herein, by its solicitors, Messrs. Huffer & Hayden, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, to-wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate and return, <u>28</u> folios at 15c each.....	\$ <u>4.20</u>
Certificate of Clerk as to transcript on cross appeal herein, 4 folios at 15c each.....	.60
Seal to said certificate to transcript.....	.20
Statement of cost of printing cross-appellant's transcript of record, collected and paid by the solicitors for cross-appellant, Messrs. Huffer & Hayden.....	<u>10.20</u>

ATTEST MY HAND AND THE SEAL OF THIS COURT, this 3rd day of January, 1916.

FRANK L. CROSBY, Clerk.

(Seal) By E. C. ELLINGTON, Deputy Clerk.

